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Faith Is the First Step: Faith-Based Solutions to Homelessness

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FAITH IS THE FIRST STEP

Faith-Based Solutions
to Homelessness



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HOMELESS RIGHTS
ADVOCACY PROJECT

Faith is the First Step

Faith-Based Solutions to Homelessness

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Sara-Jane Cohen, Congregation Har HaShem

Shelley Saxer, Pepperdine University School of Law

DEDICATION

This brief is dedicated to the memory of my father, Steven Means, who passed on June 25, 2017 at 56. He will be remembered as a devout follower of God, a brilliant lawyer, and a charitable giver to people in need.

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EXECUTIVE SUMMARY

Faith-based organizations (FBOs) have been important providers of social services throughout history. Today, they continue to play an important role with specific legal protections - not only in providing social supports, but as protectors of legal rights. Importantly, the First Amendment affords FBOs certain protections for religious exercise. The 2000 Religious Land Use and Institutionalized Persons Act (RLUIPA) further bolstered those protections. Courts have repeatedly recognized that social services, including providing shelter to unhoused people, can constitute protected religious exercise. Because of these protections, FBOs are uniquely positioned to provide shelter and help address homelessness in the United States.

This brief guides faith leaders interested in providing homeless services on their land. It highlights key considerations for new and experienced service providers, and answers key questions about setting up and operating a shelter, including:

Legal considerations

- FBOs enjoy special legal protections for their religious practice, which may allow them to provide shelter even if otherwise prohibited by local law.
- Despite these special protections on religious exercise, FBOs providing homeless services should still know of applicable laws, how to comply with them, how to avoid liabilities, and how and reduce risk for their social service activity.

Operational considerations

- There are many shelter service models to choose from, requiring different types and amounts of resources, and different levels of commitment from the host organization.
- Organizational partnerships can be key to a program's success, especially for congregations with scarce resources.
- Shelters can serve various populations for various reasons. A faith-based shelter may wish to provide services with the fewest possible barriers to serve as many people as possible, or it may choose to cater its services and entry requirements to a specific, particularly vulnerable or in-need population.
- While some rules and entry criteria are necessary for running a safe and secure shelter, often such rules can exclude people most in need and create a dehumanizing shelter experience for others - and unnecessarily so.
- Health and safety concerns are common barriers that prevent people from seeking shelter when needed. FBOs providing shelter should ensure they keep their facilities clean, inviting, and in compliance with health and safety codes.
- Shelter funding comes from a variety of sources, both public and private, and these funding sources may create restrictions or obligations for shelter providers, regardless of their religious status.

Community Education and Outreach Considerations

- Many common myths about shelters and homelessness can lead to vehement community opposition when FBOs attempt to provide homeless services.
- Community opposition to shelters is generally based on misinformation and prejudice, which may be overcome with effective messaging.
- To open and operate a shelter effectively, FBOs should become informed about the realities of homelessness (especially in their own locality) and tailor their talking points to appeal to various community groups, including their own congregation, neighborhood residents, and local politicians.

Based on this research, the brief offers **three recommendations** for religious shelter hosts and potential hosts:

1. Build partnerships with other organizations, including other FBOs, non-profits, and local government
2. Prepare for opposition from neighbors and politicians by communicating effectively about homelessness
3. Take care not to exclude those with different behaviors or backgrounds—people with criminal records, substance use issues or disabilities, victims of domestic and gender violence, and the LGBTQ community are often disproportionately homeless and are often excluded from shelters. FBOs are in a unique position to serve them.

The key takeaway from this work is that it may not be as difficult to provide homelessness services as faith leaders may assume – any FBO that desires to address homelessness on its land should be able to find a way to do so. This brief encourages FBOs to take the first step.

INTRODUCTION

Shelter is an essential human need, but one out of reach for many.¹ Unfortunately, federal and local governments have not developed sufficient humane, long-term solutions for this problem. Instead, the government has relied heavily on non-profits and FBOs to fill the gap and to provide charity and services to those in need. FBOs face their own challenges in the fight to address homelessness, but also have the potential to reduce the number of unsheltered people. This brief examines how land owned and managed by FBOs can help address homelessness. It endeavors to be a practical guide for faith organizations and leaders who wish to provide shelter and other services on their land.

“Almost all modern social services can be traced back to roots in religious organizations.”² For instance, in the 4th century, an early church ran a program to obtain “money, property, and other goods from the rich to distribute to the poor.”³ By the 12th century, church charity was an important force, providing employment in monasteries and operating shelters, almshouses, and hospices.⁴ Following the enactment of the Elizabethan Poor laws in 1601, the first set of laws to place responsibility for providing for the poor on the government, the government began to almost immediately shift that responsibility back to churches.⁵ In the U.S., the great revival movement of the 19th century spurred renewed religious interest in social services, and helped to establish orphanages, the Salvation Army, and the YMCA and YWCA.⁶ Although the government took on more responsibility for social services following the development of the Social Security Act and other social safety nets,⁷ these services have undergone major cuts in recent years and the need for non-governmental social services is growing.⁸

“Almost all modern social services can be traced back to roots in religious organizations.”²

A commitment to helping the less fortunate is a major feature of most religions, not just Christianity.⁹ A rabbinic law code states that “charity is equal in importance to all the other commandments in the Torah combined” in the Jewish faith.¹⁰ In Islam, “fighting poverty

¹ NATIONAL ALLIANCE TO END HOMELESSNESS, *Unsheltered Homelessness: Trends, Causes, and Strategies to Address* (2017), <https://endhomelessness.org/wp-content/uploads/2017/07/unsheltered-brief-final-7.26.pdf>.

² Nicholas Placido, *A History of Charity and the Church* 5 (presented at North American Association of Christians in Social Work Convention, Nov. 2015), <http://www.nacsw.org/Convention/PlacidoNAHistoryFINAL.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.*

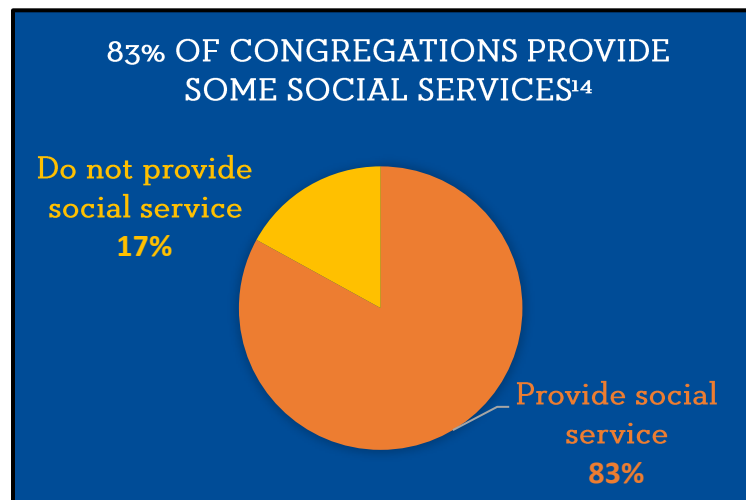
⁸ See generally FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (2d ed. 1993).

⁹ Jon D. Levenson, *Why Give? Religious Roots of Charity*, HARV. DIVINITY SCH. (Dec. 12, 2013) <https://hds.harvard.edu/news/2013/12/13/why-give-religious-roots-charity#>.

¹⁰ *Id.*

is a Holy War....equal to upholding dignity,”¹¹ and almsgiving, or zakat, is one of the Five Pillars of Islam.¹² Buddhist, Sikh, and other religious traditions also place great importance on helping people in need.¹³

Today, FBOs continue to play an essential role in provision of social services, including homeless services.¹⁴ Approximately 83% of religious congregations, representing 92% of religious service attendees, provide some kind of social service or charity.¹⁵ These congregations also make up a significant portion of all services provided in the U.S. For example, FBOs provide 58% of emergency shelter beds.¹⁶ A 2016 survey of the 50 charities with the largest revenues in the U.S. showed 20 of those charities were faith-based.¹⁷ A growing number of Americans, now a majority – 52%, up from 40% in 2001 – believe that FBOs can provide homeless services more effectively than both the government and private non-profits.¹⁸



¹¹ Muhammad Syukri Salleh, *Contemporary Vision of Poverty and Islamic Strategy for Poverty Alleviation*, 7 SAGE Open 2 (May 8, 2017), <https://doi.org/10.1177/2158244017697153>.

¹² *Id.*

¹³ *Id.*

¹⁴ See Ben Gray Bass, *Faith-Based Programs and Their Influence on Homelessness*, 32 FAM. COMMUNITY HEALTH 4, 2009, at 314, <https://pdfs.semanticscholar.org/c8e6/6579584f62194d5c2d31a294078507f1c963.pdf>; Mark Chaves & Alison J. Eagle, *Congregations and Social Services: An Update from the Third Wave of the National Congregations Study*, 7 RELIGIONS 55 (2008), <http://www.mdpi.com/2077-1444/7/5/55>; Byron Johnson, William H. Wubbenhorst, & Alfredo Alvaraez, BAYLOR INSTITUTE FOR STUDIES OF RELIGION, *Assessing the Faith-Based Response to Homelessness in America*, 20 (2017), <http://www.baylorisr.org/wp-content/uploads/ISR-Homeless-FINAL-01092017-web.pdf>; Brian J. Grim & Melissa E. Grim, *The Socio-economic Contribution of Religion to American Society*, 12 INTERDISC. J. OF RES. ON RELIGION 3, 10 (2016), <http://www.religjournal.com/pdf/ijrr12003.pdf>.

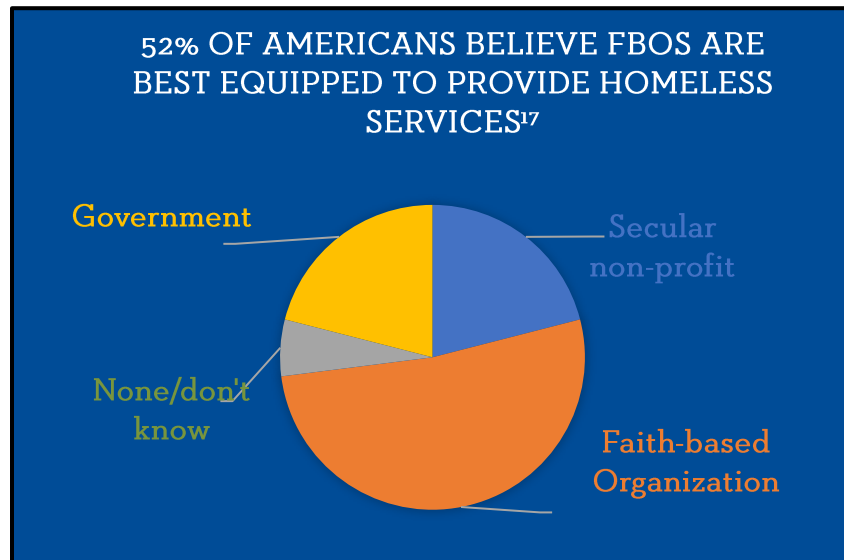
¹⁵ Chaves & Eagle, *supra* note 14.

¹⁶ Johnson et al., *supra* note 14.

¹⁷ Grim & Grim, *supra* note 14.

¹⁸ *Faith-Based Programs Still Popular, Less Visible*, PEW RESEARCH CENTER (Nov. 16, 2009), <http://www.pewforum.org/2009/11/16/faith-based-programs-still-popular-less-visible/>.

Public surveys suggest popular support for federal funding for FBOs to provide homeless services. A significant majority of Americans – 69% – support allowing churches and other houses of worship to apply for funding to provide social services.¹⁹ The majority of people who favor federal funds for religious service provision cite the need to expand the range of service options and an expectation of more compassionate and caring services from



faith organizations – as opposed to secular or government agencies – as the reasons behind their support.²⁰ Unfortunately, that number lowers when non-Christian FBOs are specified, with an approval rate as low as 39% for Muslim mosques.²¹ Provision of federal funds to Jewish synagogues and Mormon churches also received less popular support – 52% and 48%, respectively.²²

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Judaism and Islam, minority religions in the U.S., and their followers face significant discrimination. Further, bias against Jewish people and Muslim is linked: anti-Semitic views are the strongest predictor of Islamophobic sentiment in one poll. Michelle Boorstein, *Americans' bias Against Jews, Muslims linked, poll says*, WASH. POST, (Jan. 21, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/20/AR2010012004488.html>. Compassionate faith leaders and service providers alike are tasked with combatting this bias, among the general public and within their professional communities. Many religious leaders and congregations recognize the importance of interfaith dialogue and solidarity, and combatting bias against minority religions is necessary for a robust interfaith community. *Promising Practices*, PROJECT PLURALISM, <http://pluralism.org/interfaith/promising-practices/> (last visited Dec. 4, 2017); *The Necessity of Inter-Faith Diplomacy: The Catholic/Muslim Dialogue*, INSTITUTE FOR ADVANCED CATHOLIC STUDIES AT USC, <http://ifacs.com/the-necessity-of-inter-faith-diplomacy-the-catholicmuslim-dialogue/> (last visited Dec. 4, 2017). When one religious community is persecuted, it arguably endangers followers of all faiths. *Christian persecution 'same as anti-Semitism or Islamophobia'*, PREMIER CHRISTIANITY, <https://www.premierchristianity.com/News/UK/Christian-persecution-same-as-anti-Semitism-or-Islamophobia> (last visited Dec. 4, 2017). Amidst a spike in hate crimes, and facing similar forms of discrimination, national Jewish and Muslim councils have joined forces to advocate for their shared concerns. Sabine Volk, *Are Muslims the new Jews? Islamophobia and anti-Semitism in Europe*, EUROCULTURER (Feb. 9, 2017), <https://eurocultur.eu/2017/02/09/are-muslims-the-new-jews-islamophobia-and-anti-semitism-in-europe/>; Farid Hafez, *When anti-Semitism and Islamophobia join hands*, AL JAZEERA (Aug. 9, 2017), <http://www.aljazeera.com/indepth/opinion/2017/08/anti-semitism-islamophobia-join-hands-170809084731114.html>; Steve Lipman, *Muslim-Jewish Council Forms Amid Spike In Hate Crime*, N.Y. JEWISH WEEK (Nov. 16, 2016), <http://jewishweek.timesofisrael.com/muslim-jewish-council-forms-amid-spike-in-hate-crime/>; George Altshuler, *Study: Jews, Muslims share same anxieties*, WASH. JEWISH WEEK (Apr. 5, 2017),

Despite significant efforts by many faith-based organization to provide shelter and other services where government services fall short, hundreds of thousands of people still remain unhoused. Current national estimates project a population of at least 553,742 people experiencing homelessness.²³ However, this estimation is likely a significant undercount of homeless individuals in the U.S.²⁴

While there is an ongoing debate about whether the government should be responsible for providing for basic needs rather than leaning on private and religious charities,²⁵ faith-based organizations remain an essential component of U.S. homeless services. However, many barriers exist that may cause religious leaders and communities to hesitate when deciding whether to provide services.

Often, faith leaders do not realize that it is possible to provide shelter and other services on their land.²⁶ Even if faith leaders recognize their potential to provide services, doing so may seem overwhelmingly complicated or even impossible. Hosting a shelter is a complex function requiring significant planning, research, and resource expenditure; failing to take the proper steps could present risks to both participants and workers.

Further, organizations wishing to provide shelter on their land must understand not only the administrative and operational practices of running a shelter, but also the law on a federal, state, and local level. Because freedom of a religious expression is a protected and fundamental right in the U.S., religious institutions enjoy extra legal protections to use religiously owned or managed land. Also, dedicated service providers often employ experts for guidance in these areas, but religious organizations rarely have the resources to pay for such expertise. Hosting a shelter can open the host up to many difficulties, including community backlash, legal challenges, and fines. Providing easily accessible resources and information to provide services on their land without undue burdens is an important step

<http://washingtonjewishweek.com/37763/study-jews-muslims-share-same-anxieties/news/>. Interfaith alliances such as these, which address and combat bias against some religions, are essential to developing efficient and expansive networks of care for organizations fighting homelessness because they allow labor, resources and knowledge to be shared in pursuit of a common goal. See generally *infra* Part I, Section (C).

²³ Meghan Henry et al, *Part 1: Point-in-Time Estimates of Homelessness: The 2017 Annual Homeless Assessment Report (AHAR)*, U.S. DEP'T. OF HOUSING AND URBAN DEV. (Dec. 2017), <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

²⁴ Maria Foscarnis, *Homeless problem bigger than our leaders think*, USA TODAY (Jan. 16, 2014), <https://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/>.

²⁵ Douglas Alexander, *Responsibility to the poor: a matter of justice, not charity*, THE GUARDIAN (Oct. 8, 2010), <https://www.theguardian.com/global-development/poverty-matters/2010/oct/08/douglas-alexander-responsibility-poor-justice>; *Financial Assistance for the Poor Should Be the Responsibility of Charities, Not Government*, DEBATEWISE.ORG, <http://debatewise.org/debates/3576-financial-assistance-for-the-poor-should-be-the-responsibility-of-charities-not-government/> (last visited Dec. 4, 2017); David Beckmann, *Caring for Poor People: Should the Church Do It Alone?*, HUFFINGTON POST (May 14, 2012), https://www.huffingtonpost.com/david-beckmann/caring-for-poor-people-should-church-do-it-alone_b_1507824.html.

²⁶ Interview with Bill Kirlin-Hackett, Director, Interfaith Task Force on Homelessness (Sept. 27, 2017).

towards unlocking the unrealized potential of faith-based organizations to care for their unhoused neighbors.

Part I of this brief examines three case studies of religious FBOs providing shelter to unhoused people. The first case study, Chaplains on the Harbor, is a Christian organization in Westport, Washington.²⁷ Second, this Part will examine Congregation Har HaShem, a Jewish synagogue in Boulder, Colorado.²⁸ Last is a study of Muslim Housing Services in Seattle, Washington.²⁹ This selection of case studies aims to both acknowledge the diversity of faith communities and to demonstrate the shared goals and barriers for organizations of all faiths performing work to shelter their unhoused neighbors.

Part II examines common operational concerns when opening and running a shelter. Examples of operational challenges include public health protections, staffing, and fundraising. The operational aspects of running a safe, clean, and welcoming shelter can be daunting. This Part identifies key concerns and provides resources to help faith leaders make thoughtful and informed decisions regarding the services they provide.

Part III discusses common legal considerations for religious providers of social services. Of particular importance is the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law that protects religious rights to use land for religious expression, including provision of services. Also salient are contractual and zoning issues and procedures for dealing with law enforcement. While the laws in each jurisdiction vary, this Part attempts to provide a helpful framework for faith leaders regarding their legal rights and the legal barriers they may encounter when setting up and operating a shelter.

Part IV looks at how FBOs can best balance potential tensions between their desire to house people in need and the potential concerns of their congregation, surrounding community, and shelter guests. These tensions can be compounded by religious organizations' tendency to be located in residential neighborhoods, occupied largely by property owners and families.³⁰ Homelessness is commonly stigmatized, with pervasive stereotypes painting people experiencing homelessness as criminals, drug addicts, or lazy people who do not want to work.³¹ Property owners may also be worried about their property value dropping.³² Even superficial concerns, for instance that a shelter or its guests will not fit into the aesthetic of the neighborhood, can create significant resistance.³³ Hopeful shelter

²⁷ CHAPLAINS ON THE HARBOR, <https://chaplainsontheharbor.org/> (last visited Dec. 4, 2017).

²⁸ CONGREGATION HAR HASHEM, <https://www.harhashem.org/> (last visited Dec. 4, 2017).

²⁹ MUSLIM HOUSING SERVICES, <http://www.muslim-housing.org/> (last visited Dec. 4, 2017).

³⁰ Shelley Saxer, *When Religion Becomes a Nuisance: Balancing Land Use and Religious Freedom when Activities of Religious Institutions Bring Outsiders into the Neighborhood*, 84 KY. L.J. 507, 510 (1996).

³¹ Jayda Shuavarnnasri, *6 Things I Want You to Understand About Being Homeless in America*, NATIONAL COALITION FOR THE HOMELESS (Jul. 8, 2014), <http://nationalhomeless.org/tag/myths/>.

³² *Overcoming opposition to affordable housing*, ONTARIO HUMAN RIGHTS COMMISSION, <http://www.ohrc.on.ca/en/zone-housing-human-rights-and-municipal-planning/overcoming-opposition-affordable-housing> (last visited Dec. 4, 2017).

³³ *Id.*

hosts must be prepared to manage the concerns and interests of potential residents, members of the congregation, the surrounding community, and lawmakers.

I. Case Studies

While faith-based shelter hosts all enjoy the same legal protections on their religious exercise, the services they provide can vary greatly – just as each congregation is different, the shelter model that works for them will also differ. FBOs may find it instructive to look to other organizations that have succeeded in creating shelter.

A. Chaplains on the Harbor

Chaplains on the Harbor (Chaplains) is an Episcopal ministry in Westport, Washington that has made serving poor and vulnerable communities its primary mission.³⁴ Grays Harbor County, where Westport is located, is a rural, isolated community, often called “the edge of the world” by people that live there.³⁵ The collapse of the timber industry that once sustained the region has left extensive poverty in its wake.³⁶ Residents are segregated along class lines with a few wealthy families controlling the positions of power and owning most of the property.³⁷ Poverty is heavily criminalized³⁸ and local jails receive financial resources from the Washington State Department of Corrections based on how many beds they fill.³⁹ This mix results in a vulnerable community, many of whom experience barriers to employment and housing due to a criminal record – a record that is often the direct result of their poverty.⁴⁰

Especially in Westport, local leadership is resistant to efforts to help those in need and there is a “long history of vigilante violence deployed for the defense of power holders.”⁴¹ This dynamic has resulted



Photo Credit: CHAPLAINS ON THE HARBOR,
<https://chaplainsontheharbor.org/>

³⁴ CHAPLAINS ON THE HARBOR, *supra* note 27.

³⁵ Shailly Gupta Barnes, *Hoi Hai! – A Dispatch from Grays Harbor County, WA*, Kairos, <https://kairoscenter.org/holi-hai-grays-harbor-county/> (last visited Dec. 4, 2017).

³⁶ CHAPLAINS ON THE HARBOR, *supra* note 27; see also Barnes, *supra* note 35.

³⁷ Telephone Interview with Aaron Scott, Organizer, Chaplains on the Harbor (Sept. 27, 2017); Barnes, *supra* note 35.

³⁸ Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, *WASHINGTON’S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT* (Sara Rankin ed., 2015).

³⁹ Barnes, *supra* note 35.

⁴⁰ Telephone Interview with Aaron Scott, *supra* note 37; Barnes, *supra* note 35.

⁴¹ Telephone Interview with Aaron Scott, *supra* note 37.

in significant resistance to, and bitter battles over, Chaplains' much-needed efforts to shelter and provide for community members in need.⁴² Chaplains engages in ministry throughout the county and sometimes shares resources with other religious organizations and service providers in the area; for example, during its first winter shelter season. In 2016, it shared food, blankets, and volunteers with Revival Grays Harbor, a nearby shelter in Aberdeen.⁴³

After operating as a community center for two years and providing other services to the Westport community, Chaplains began offering cold weather sanctuary in 2016.⁴⁴ Initially, guests stayed in an encampment in the churchyard; however, after "threats and violence from vigilantes," Chaplains moved the program inside to its community room, expanding to the worship area on especially busy nights.⁴⁵ Between November and February that first year, the shelter was open for 110 nights straight and remained open for most of the day when there was particularly bad weather.⁴⁶ Unfortunately, the need in the community is so great and the staff of Chaplains so dedicated to their ministry that they over-extended their staff and budget staying open and buying food for guests.⁴⁷ This problem was compounded by the move indoors, which required 24-hour volunteer supervision, unlike the outdoor encampment.⁴⁸ In subsequent seasons, Chaplains has adopted an emergency model, only opening during severe cold or storms.⁴⁹

CHAPLAINS ON THE HARBOR	
FAITH	Episcopal
LOCATION	Westport, Greys Harbor County, WA
PARTNERS	Other Greys Harbor County FBOs
SERVICES	Emergency cold weather shelter, meals

Chaplains' shelter program is open from 6:00pm-9:00am and provides two free meals per day.⁵⁰ It serves around twenty people – mostly young adults, as well as some elders and children. It is low-barrier, meaning there are limited requirements for entry.⁵¹ While many shelters are age- or gender-segregated (forcing families to split up and excluding transgender and non-binary people), or exclude people with criminal backgrounds or who are intoxicated or dependent on substances, Chaplains accepts people of all ages, genders, and

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

sexual orientations, as well as people with criminal history and substance abuse issues.⁵² The only qualification is that they don't engage in behavior that endangers staff or other guests.⁵³ Staff are trained in de-escalation and Narcan administration in case of overdose, and sharps containers for disposal of used needles are provided on site.⁵⁴ While drug use is prohibited by the shelter's code of conduct, this is difficult to enforce, and simply being under the influence will not result in removal.⁵⁵

There is an acute need for low-barrier shelters like Chaplains throughout the country, but especially in Grays Harbor County.⁵⁶ Unfortunately, low-barrier shelters like Chaplains often experience intense pushback from communities that may be more tolerant of shelters that only accept, for example, single mothers with children who do not use drugs or alcohol and who have no criminal record.⁵⁷ However, it is precisely those populations that tend to incite fear and prejudice in their uninformed neighbors – people with criminal records and substance issues, young adults, and the LGBTQ community, to name a few – which are often most in need of shelter and community.⁵⁸

Chaplains has faced vehement and even violent opposition from the Westport community, which has been “actively enabled by city government and police.”⁵⁹ Chaplains sometimes faces backlash for its organizing efforts in other municipalities in the county, but it overcomes it to some extent with its religious message and reminders that the homeless population is also part of the community.⁶⁰ Not so in Westport. While many neighbors and Westport residents support Chaplains' efforts, they are poor and without access to power or resources.⁶¹ This support base has little influence over the oligarchical city leadership backed by violent vigilantes.⁶²

A public comment session put on by the city to discuss the shelter program devolved unchecked into a three-hour forum for violent threats of vigilante action, including thinly veiled threats by the city attorney to remove people from inside the sanctuary.⁶³ Westport police have refused to issue no-trespass warnings against local business owners who “publicly threatened [Chaplains'] staff, encampment members [and other guests], and property.”⁶⁴ Nearby residents and property owners “assaulted a 19-year-old member of [the] encampment, later attempted to run him over with a truck, threatened to firebomb [Chaplains], and offered

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Interview with Bill Kirlin-Hackett, *supra* note 26.

⁵⁸ Telephone Interview with Aaron Scott, *supra* note 37.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

\$2,000 to anyone willing to ‘take care of this problem.’”⁶⁵ In another (ironic) incident, “an angry neighbor showed up after dark, intoxicated, [and] entered the church yelling, complaining that [Chaplains’] work was making Westport unsafe for his children” – while another family with a small child was staying at the shelter.⁶⁶ Faced with such horrific retaliation, Chaplains’ staff have shown considerable courage – at times sleeping outside the church door with a baseball bat nearby – in their ministry to serve their vulnerable unhoused neighbors.⁶⁷

B. Congregation Har HaShem

Congregation Har HaShem, a Jewish synagogue in Boulder, Colorado, has been providing homeless services on their land for the last decade.⁶⁸ Homelessness was steadily increasing in Boulder, and the existing services were falling far short of the community’s need.⁶⁹ The one homeless shelter in Boulder had limited capacity.⁷⁰ Further, the strict rules and expectations it imposed on the guests it could accommodate effectively barred many



Photo Credit: CONGREGATION HAR HASHEM, <https://www.harhashem.org/>

from obtaining shelter.⁷¹ A Boulder ordinance outlawing camping or sleeping on public property with any covering made the situation even worse, effectively criminalizing life within the city for people without private real property rights.⁷²

As a response to the mounting homelessness crisis in Boulder, a small group of homeless and formerly

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Telephone Interview with Sara-Jane Cohen & Bill Cohen, Congregation Har HaShem (Oct. 15, 2017).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*; Boulder, Col. Code § 5-6-10; Michael LaGarde & Paul Warren, *Too High A Price: What Criminalizing Costs Colorado*, U. OF DENVER STURM C. OF L. (2016), <http://www.law.du.edu/documents/homeless-advocacy-policy-project/Boulder-Spotlight.pdf>; Mitchell Byars, *Boulder orders Har Hashem synagogue to stop allowing homeless camping*, DAILY CAMERA (Jul. 27, 2012), http://www.dailycamera.com/ci_21176950/boulder-orders-har-hashem-synagogue-stop-allowing-homeless. In fact, the vast majority of people who are ticketed under this ordinance have done nothing except sleeping under some kind of shelter and Boulder issues more tickets for public camping than any other city in Colorado. Erica Meltzer, *Report: Most Boulder camping violations are just for camping*, DAILY CAMERA (Mar. 3, 2016), http://www.dailycamera.com/news/boulder/ci_29607915/report-most-boulder-camping-violations-are-just-camping.

homeless Boulder residents organized a coalition to better meet the needs of themselves and their neighbors.⁷³ Boulder Outreach for Homeless Overflow, or BOHO for short,⁷⁴ approached Har HaShem hoping to utilize the synagogue to provide winter emergency shelter one night a week during the cold winter months.⁷⁵ BOHO also formed partnerships with several other FBOs, each hosting the shelter a different night of the week.⁷⁶ Har HaShem and other congregations provided the land and shelter, while BOHO provided staffing and ran the overnight programs.⁷⁷ Congregation Har HaShem also provides dinner to its shelter guests, served by volunteers from the synagogue.⁷⁸

CONGREGATION HAR HASHEM	
FAITH	Jewish
LOCATION	Boulder, CO
PARTNERS	Local non-profit Bridge to Home
SERVICES	Rotating emergency cold weather shelter, meals

This partnership between BOHO, funded by the city of Boulder, and Congregation Har HaShem provided the congregation with a low-impact, low-cost way to serve its homeless neighbors.⁷⁹ Because the shelter operated on a rotating model, each host organization was affected only one day each week, and because BOHO staffed the shelters overnight, there was no need for the hosts to provide staff.⁸⁰ The program at Har HaShem can accommodate approximately 100 guests per night and presents few barriers to people seeking shelter; it operates on a drop-in model that subjects guests to a brief security check to ensure they don't have weapons but it does not impose onerous registration or behavioral restrictions on residents.⁸¹ While Congregation Har HaShem shelters both men and women, the program is restricted to adults.⁸²

Congregation Har HaShem is a notable example of a FBO that has not only successfully provided homeless services on its land for many years but also successfully stood up to infringements on its religious practice and rights. In 2011, after hosting indoor emergency winter shelter for years with no complaints from the surrounding community,

⁷³ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68; Erica Meltzer, *Urged to reorganize, Boulder's homeless agencies seek cooperative solutions*, DAILY CAMERA (May 2, 2015), http://www.dailycamera.com/news/boulder/ci_28036020/urged-reorganize-boulders-homeless-agencies-seek-more-cooperative.

⁷⁴ BOULDER OUTREACH FOR HOMELESS OVERFLOW, <http://www.boulderboho.org/> (last visited Dec. 4, 2017).

⁷⁵ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

⁷⁶ *Id.*; BOULDER OUTREACH FOR HOMELESS OVERFLOW, *supra* note 74.

⁷⁷ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68; Meltzer, *supra* note 72.

⁷⁸ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

Congregation Har HaShem was approached by BOHO about hosting a small summer encampment on a field on the congregation's property, which it agreed to do.⁸³

The two organizations took several steps to address potential health and safety concerns and assuage community pushback.⁸⁴ As with the winter program, the encampment was staffed by BOHO.⁸⁵ Unlike the winter program, however, the summer encampment did not take drop-in guests; rather, BOHO selected and pre-approved a small group of about 15 guests.⁸⁶ This vetted group of guests was subject to rules of conduct, prohibiting potential risks and nuisances such as loud music and open-flame cooking.⁸⁷ The field where the encampment was located is not visible from nor adjacent to any neighboring properties.⁸⁸ Anticipating objections to this plan, Congregation Har HaShem's executive director visited all of their surrounding neighbors to inform them about the encampment and ask that they call the synagogue if any issues arise.⁸⁹

The summer encampment operated without issue for the first summer; neither the city nor the synagogue knew any complaints or concerns from neighbors.⁹⁰ Then, in 2012 when the camp reopened for the summer, an anonymous complaint was filed with the city.⁹¹ Boulder's zoning administrator visited the site and served the synagogue with a cease and desist letter due to a zoning violation.⁹² Camping on private land with permission of the owner is not criminalized under Boulder ordinances, as camping on public land is; however, zoning regulations prohibit camping even with a private land owner's permission on land within residential estate zoning areas.⁹³ Because Congregation Har HaShem is in a residential estate zoning area, the encampment constituted a zoning violation and it was ordered by the city to shut the camp down by the end of the week.⁹⁴

Fortunately, Congregation Har HaShem had the law – and a talented lawyer – on their side. Congregation member and lawyer Bill Cohen, conducted research that led him to *Fifth Avenue Presbyterian Church v. City of New York*, in which the city notified the church it could not continue its practice of allowing homeless individuals to sleep on the church's front steps.⁹⁵ The Second Circuit found that accommodating unhoused people in this way was an

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*; Letter from Gary Fifer, Executive Director, Congregation Har HaShem, to Charles Ferro, Land Use Review Manager, City of Boulder, Col. (Aug. 15, 2012) https://www-static.bouldercolorado.gov/docs/8.20.2012_heads_up_FINAL-1-201305161545.pdf.

⁹² Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68; Byars, *supra* note 72.

⁹³ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

⁹⁴ *Id.*

⁹⁵ *Id.*; *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 576 (2d Cir. 2002).

acceptable accessory use⁹⁶ of the church's building and a legitimate form of religious exercise protected by the First Amendment, and that the city had presented no compelling interest for so burdening that practice.⁹⁷ Mr. Cohen presented his legal findings to the zoning administrator, who "caved immediately," allowing the summer encampment to re-open.⁹⁸ The camp continued to operate smoothly without legal or community confrontation through the summer of 2013, after which it had to shut down due to flooding.⁹⁹

Boulder changed its homeless service model in 2017, stripping funding from BOHO and ending the partnership between BOHO and Congregation Har HaShem.¹⁰⁰ However, the congregation is working with the city's new partner on homeless services, the non-profit Bridge House¹⁰¹ to develop a service model.¹⁰² Congregation Har HaShem will continue their homeless services within this new partnership, as is their community - the congregation takes a great deal of pride in their role in their efforts to address homelessness.¹⁰³ In fact, when the congregation puts out the call for mealtime volunteers, the turn-out is so large it often must turn people away.¹⁰⁴ The response from the larger community of Boulder - aside from the anonymous complaint about the encampment - has been similarly enthusiastic: "throughout

⁹⁶ "'Accessory use' means a use located on the same lot as the principal building, structure, or use to which it is related and that:

(1) Is subordinate to and customarily found with the principal use of the land; and
(2) Is operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the principal use." Letter from Gary Fifer, *supra* note 91.

⁹⁷ *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 576 (2d Cir. 2002).

⁹⁸ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68; Erica Meltzer, *Homeless camping to resume at Boulder's Har HaShem*, DAILY CAMERA (Aug. 22, 2012),

http://www.dailycamera.com/ci_21377781/homeless-camping-resume-at-boulders-har-hashem.

⁹⁹ Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

¹⁰⁰ Erica Meltzer, *Report: Boulder should undertake major reorganization of city's homeless service providers*, DAILY CAMERA (May 2, 2015), http://www.dailycamera.com/news/boulder/ci_26278776/boulder-homeless-services-report; Matt Cortina & Angela K. Evans, *The good, the bad and the ugly*, BOULDER WEEKLY (Jun. 8, 2017), <http://www.boulderweekly.com/news/the-good-the-bad-and-the-ugly/>; *Homelessness Working Group Recommendations for Long-term Homelessness Strategy and Summer 2017 Transition Plan*, CITY OF BOULDER CITY COUNCIL, (May 16, 2017), https://www-static.bouldercolorado.gov/docs/Homelessness_Working_Group_Recommendations_for_Long-term_Homelessness_Strategy_and_Summer_2017_Transition_Plan-MemoFINAL-1-201705180904.pdf?_ga=2.238659520.1329885392.1505850616-1007085619.1504798760; Lucy Haggard, *What does Boulder's new homeless strategy mean for its community?*, CU INDEP. (Sept. 23, 2017),

<https://cui-independent.com/2017/09/23/boulder-homelessness-housing-strategy/>.

¹⁰¹ BRIDGE HOUSE, <https://boulderbridgehouse.org/> (last visited Dec. 4, 2017); Haggard, *supra* note 100; *Boulder Shelter Management Plan and Homelessness Strategy Update*, CITY OF BOULDER HUMAN SERVICES (Sept. 19, 2017), https://www-static.bouldercolorado.gov/docs/5A_Homelessness_BSH_Mgmt_Plan_Presentation-1-201709191520.pdf?_ga=2.264891983.1329885392.1505850616-1007085619.1504798760.

¹⁰² Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

the community, the respect that [Congregation Har HaShem] and the other congregations get because of the work that they're doing is extraordinary.”¹⁰⁵

C. Muslim Housing Services

Muslim Housing Services (MHS) is in Seattle, Washington and serves families, including many refugees and second migration immigrants¹⁰⁶ from East Africa, Eastern Europe, and the Middle East in the King County area.¹⁰⁷ Many have very limited English language skills and few applicable skills for working in the U.S.¹⁰⁸



Photo Credit: MUSLIM HOUSING SERVICES, <http://www.muslim-housing.org/>

MHS provides many services, including homelessness prevention, transitional housing, case management, rental assistance, and a youth program.¹⁰⁹ Six full-time staff speak eight languages besides English, and provide housing for about 100 families each month.¹¹⁰

The organization's primary goal is that “[a]ll families become self-sufficient and achieve permanent housing.”¹¹¹ They help house large families – sometimes up to 11 family members – and are lenient in “dealing with families

with very young children, disabilities, or other issues preventing them from working or becoming self-sufficient.”¹¹²

MHS was founded in 1999 in response to the inadequacy of existing transitional housing programs. Following discussions among community and religious leaders, “the community came together to deal with issues people were facing.”¹¹³ Many of the existing housing programs in the area had duration caps of 2-4 weeks, and they had trouble meeting

¹⁰⁵ *Id.*

¹⁰⁶ 64% of U.S. Muslims are immigrants. 70.6% of Americans are Christian, 1.9% are Jewish, and 0.9% are Muslim. *Religious Landscape Study: Immigrant Status*, PEW RESEARCH CENTER, <http://www.pewforum.org/religious-landscape-study/immigrant-status/> (last visited Mar. 18, 2018).

¹⁰⁷ MUSLIM HOUSING SERVICES, *supra* note 29.

¹⁰⁸ Presentation by Rizwan Rizwi, Executive Director, Muslim Housing Services (May 10, 2017).

¹⁰⁹ MUSLIM HOUSING SERVICES, *supra* note 29.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Interview with Rizwan Rizwi, Executive Director, Muslim Housing Services (Feb. 20, 2018)

the needs of refugees and others without language and vocational skills.¹¹⁴ For this reason, MHS allows for flexible timelines that are sensitive to each family's circumstances to allow families to become self-sufficient.¹¹⁵

MUSLIM HOUSING SERVICES	
FAITH	Muslim
LOCATION	Seattle, WA
PARTNERS	N/A
SERVICES	Homelessness prevention, transitional housing, case management, rental assistance, youth program

MHS is often the first place that refugee and immigrant families in the area come for services due to its focus on helping families integrate into their adopted country. They help clients learn English, adjust to life in the U.S., and balance their two cultures.¹¹⁶

The organization is operated out of one central office location.¹¹⁷ From this location, they plan and coordinate their services and receive clients. They reach most of their clients via referrals from King County's 211 Coordinated Entry System.¹¹⁸ MHS owns one property, a single-family home they offer as housing to clients.¹¹⁹ The bulk of their services comes in the form of rental assistance.¹²⁰ MHS works with private landlords to pay some or all of a family's rent.¹²¹ Staff also help tenants who may otherwise have trouble finding and keeping housing do so by interfacing with the private landlords and providing an organization-backed guarantee that the rent will be paid.¹²²

From this brief's beginning, an important aim was to include case studies representative of a range of faiths, particularly those that are non-majority and non-Judeo-Christian. However, finding a Muslim organization providing homeless services proved much more difficult than identifying Christian and Jewish organizations to highlight. MHS, unlike Chaplains on the Harbor and Congregation Har HaShem, is primarily a non-profit service provider rather than a place of worship that also provides services.¹²³ This distinction makes it an especially intriguing case to study, both because it presents an alternative faith-based service model and because it raises questions regarding the relative scarcity of Muslim homeless service providers.

¹¹⁴ Presentation by Rizwan Rizwi, *supra* note 108.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Interview with Rizwan Rizwi, *supra* note 113

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*; see *supra* Part I, Sections (A) & (B).

Mosques, Islamic centers, and other Muslim organizations, like Jewish, Christian, and other religious organizations, share the same desire and mission to help people in need¹²⁴ – and they often do.¹²⁵ Unfortunately, however, due to Islamophobia¹²⁶ – which is widespread and increasing in the U.S.¹²⁷ – Muslim organizations face greater levels of resistance in their communities than organizations of other faiths, even when simply attempting to establish a place of worship.¹²⁸ This heightened resistance to the mere presence of Muslim organizations, compounded with communities’ often-vehement opposition to homeless service providers,¹²⁹ may dissuade mosques and other Islamic centers from providing formal, long-term shelter and other services.¹³⁰ Other relevant factors include the relatively small Muslim population in the U.S. compared to Judeo-Christians¹³¹ and a general lack of resources.¹³²

II. Legal Considerations

FBOs are uniquely positioned to provide for people in need, largely due to legal protections on religious freedom. However, these protections come with limitations and

¹²⁴ Levenson, *supra* note 9; *supra* Introduction.

¹²⁵ Email from Rizwan Rizwi, Executive Director, Muslim Housing Services (Mar. 3, 2018); *Social Services*, Islamic Circle of North America, <http://www.icna.org/social-services/> (last visited Mar. 19, 2018); Anna Soubry & Wes Streeter, *The difference made by Muslim charities is often ignored – especially over Christmas*, INDEP. (Dec. 19, 2017), <https://www.independent.co.uk/voices/muslim-charity-charities-christmas-homelessness-volunteer-a8117116.html>; Anealla Safdar, *UK mosques open doors to homeless as temperatures plunge*, AL JAZEERA (Mar. 2, 2018), <https://www.aljazeera.com/news/2018/03/uk-mosques-open-doors-homeless-temperatures-plunge-180302153601580.html>.

¹²⁶ Islamophobia is “[a]n exaggerated fear, hatred, and hostility toward Islam and Muslims that is perpetuated by negative stereotypes resulting in bias, discrimination, and the marginalization and exclusion of Muslims from social, political, and civic life.” *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, GALLUP, <http://news.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx> (last visited Mar. 19, 2018).

¹²⁷ Faiza Patel & Rachel Levinson-Waldman, *The Islamophobic Administration*, BRENNAN CENTER FOR JUSTICE (Apr. 19, 2017), https://www.brennancenter.org/sites/default/files/publications/BCJ_Islamophobic_Administration.pdf; Samra Habib, *Islamophobia is on the rise in the US. But so is Islam*, PRI’S THE WORLD (Sept. 9, 2016), <https://www.pri.org/stories/2016-09-09/muslims-america-are-keeping-and-growing-faith-even-though-haters-tell-them-not>; Masood Farivar, *Attacks Against US Muslims Growing in Frequency, Violence*, VOA NEWS, <https://www.voanews.com/a/us-rising-islamophobia/3469525.html> (last updated Aug. 17, 2016).

¹²⁸ Interview with Rizwan Rizwi, *supra* note 113; *Controversies Over Mosques and Islamic Centers Across the U.S.*, PEW RESEARCH CENTER (Sept. 27, 2012), <http://www.pewforum.org/2012/09/27/controversies-over-mosques-and-islamic-centers-across-the-u-s-2/>; Laurie Goodstein, *Across Nation, Mosque Projects Meet Opposition*, N.Y. TIMES (Aug. 7, 2010), <http://www.nytimes.com/2010/08/08/us/08mosque.html>; Fakhruddin Ahmed, *In Trump’s America, mosque building faces stiff resistance; but kindness often wins*, New Jersey Opinion (Nov. 21, 2017), http://www.nj.com/opinion/index.ssf/2017/11/in-trumps_america_mosque_building_faces_stiff_resi.html.

¹²⁹ See *infra* Part IV.

¹³⁰ Email from Rizwan Rizwi, *supra* note 125.

¹³¹ 70.6% of Americans are Christian, 1.9% are Jewish, and 0.9% are Muslim. *Religious Landscape Study*, PEW RESEARCH CENTER, <http://www.pewforum.org/religious-landscape-study/> (last visited Mar. 18, 2018).

¹³² Khaled A. Beydoun, *Poor and Muslim in “War on Terror” America*, ISLAMIC MONTHLY (May 25, 2015), <https://www.theislamicmonthly.com/poor-and-muslim-in-war-on-terror-america/>; Email from Rizwan Rizwi, *supra* note 125.

responsibilities. Often, federal protections on religious exercise come into conflict with local and state laws and regulations. It is important for religious service providers to know their rights and the limitations on those rights when a law or regulation interferes with their plans to provide services. Shelters must abide by relevant anti-discrimination laws. A shelter's responsibility to make its premises accessible and refrain from discrimination may vary based on features of the program and premises, and its jurisdiction. Organizations that provide homeless services should also consider how they may expose themselves to – and protect themselves from – civil liability from guests and other visitors to the premises.

A. First Amendment

The original basis for religious organizations' right to provide homeless services on their land is the First Amendment.¹³³ This amendment protects freedom of religious exercise.¹³⁴ "American courts have repeatedly recognized that providing housing and other essential services for the homeless and disadvantaged are forms of religious activity and worship."¹³⁵

*"American courts have repeatedly recognized that providing housing and other essential services for the homeless and disadvantaged are forms of religious activity and worship."*²⁰⁴

B. Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act (RLUIPA) was introduced in 2000 to protect religious activity on religiously owned or managed land.¹³⁶ Following repeated losses for religious land use plaintiffs, Congress introduced RLUIPA to legislatively solve courts' "highly restrictive" view of the First Amendment.¹³⁷ In particular, Congress was concerned about laws that conflicted or interfered with religious practice performed on religious land.¹³⁸ Because RLUIPA is federal law, its protections usually pre-empt existing state and other local prohibitions against use of land, religious or otherwise.¹³⁹

¹³³ U.S. Const. amend. I

¹³⁴ David L. Abney, *Religion and Housing for the Homeless: Using the First Amendment and the Religious Land Use Act to Convert Religious Faith into Safe, Affordable Housing*, 8 ST. MARY'S L. REV. ON MINORITY ISSUES 1 (2005).

¹³⁵ *Id.*

¹³⁶ *Id.*; 42 U.S.C. § 2000cc; see generally *A Guide to Federal Religious Land Use Protection*, U.S. DEP'T OF JUST. C.R. DIVISION, <https://www.justice.gov/crt/file/875386/download> (last visited Mar. 20, 2018).

¹³⁷ Abney, *supra* note 131 at 8.

¹³⁸ *Id.* Laws which do expressly target a religion or denomination are examined by the court under a stricter test and will be found unconstitutional unless there is a compelling purpose for the law and no other method of achieving that purpose. Richard F. Duncan, *The "Clearest Command" of the Establishment Clause: Denominational Preferences, Religious Liberty, and Public Scholarships That Classify Religions*, U. OF NEB.-LINCOLN, 932 (2010), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1128&context=lawfacpub>.

¹³⁹ Abney, *supra* note 131.

Since RLUIPA, “religious land use plaintiffs have been more successful in federal courts than ever before.”¹⁴⁰ Before RLUIPA, it was much harder for FBOs to prevail over laws that prohibited some aspect of their religious practice but did not expressly discriminate based on faith.¹⁴¹ Under RLUIPA, however, land use regulations that substantially burden¹⁴² a congregation’s religious activity must further a compelling government interest¹⁴³ and be the least restrictive means of furthering that interest.¹⁴⁴

Most RLUIPA disputes center on what constitutes a “substantial burden.”¹⁴⁵ The substantial burden provision must be read with another provision of RLUIPA, which states that “no government shall impose or implement a land use regulation that...unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”¹⁴⁶ While what qualifies as “religious exercise” may be disputed, “courts have repeatedly recognized that providing housing and services for the homeless constitutes a form of religious activity.”¹⁴⁷ Further, “religious housing facilities for the homeless clearly qualify”¹⁴⁸ as religious

¹⁴⁰ *Religious Land Use in the Federal Courts Under RLUIPA*, 120 HARV. L. REV. 2178 at 2189 (2007).

¹⁴¹ Abney, *supra* note 131 at 10.

¹⁴² “Courts have, for example, found substantial burdens on religious exercise in a denial of a church construction permit due to onerous off-street parking requirements imposed by a city, a permit condition requiring a religious retreat center to operate as a bed-and-breakfast, a denial of construction of a parish center, a denial of expansion plans for a religious school, and a denial of the ability to convert a building’s storage space to religious use.

Conversely, courts have found no substantial burden violation when a church was denied the amount of off-street parking it would have preferred when there were reasonable parking alternatives available, when a religious high school was denied the ability to operate a commercial fitness center and dance studio out of a portion of its building, and when a church was barred from demolishing an adjacent landmarked building it had purchased in order to construct a family life center, as there was other space on the church’s campus that would be suitable.” *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)*, U.S. DEP’T. OF JUSTICE, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rliupa_q_a_9-22-10_O.pdf.

¹⁴³ “Examples of interests that may be compelling are those related to preserving public health and safety. For example, safety concerns relating to traffic can be compelling. However, a county or municipality cannot simply point to an interest in traffic safety in the abstract as a compelling interest justifying a substantial burden on religious exercise. Rather, the government must show that it has a compelling interest in achieving that interest through the particular restriction at issue, such as safety interests in regulating traffic flow on the particular street at issue.” *Id.* “To justify an ordinance on these grounds, however, a government must provide evidence – something better than “shoddy data” – demonstrating the effect of the speech regulation on those secondary effects.” *McLaughlin v. City of Lowell*, 140 F.Supp.3d 177 (2015).

¹⁴⁴ Abney, *supra* note 131 at 10; 42 U.S.C. § 2000cc(a)(1) (“No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest”).

¹⁴⁵ Abney, *supra* note 131 at 8.

¹⁴⁶ *Id.* at 10; 42 U.S.C. § 2000cc(b)(3)(B).

¹⁴⁷ Abney, *supra* note 131 at 8.

¹⁴⁸ *Id.*

assemblies.¹⁴⁹ Therefore, the main inquiry in RLUIPA cases will be whether local government action, usually in the form of a law, statute, or zoning ordinance, presents a substantial burden to FBOs wishing to provide housing on their land.¹⁵⁰

A substantial burden exists if the religious institution would have to endure additional delay, uncertainty and expense in order to find suitable substitute property for its religious purposes, or have to restart the permit process to satisfy the zoning authorities. The important point is that a religious institution need not prove that it has nowhere else to practice its religious tenets, just that the government has improperly imposed a substantial burden on the religious institution's choice of a location to perform its worship. Land use regulations that would otherwise prevent religious organizations from providing housing facilities and services to the homeless should be subjected to the substantial burden test because such regulations cripple the free exercise of religion.¹⁵¹

While RLUIPA grants greater protections to FBOs providing housing and limits the power of local governments to prohibit such use, it is not a blanket exemption from all land use legislation.¹⁵² RLUIPA applies to any “land use regulation,” defined as a “zoning or landmarking law...that limits or restricts a [religious institution’s] use or development of land.”¹⁵³ “Zoning law encompasses laws, ordinances, or codes that determine what type of building or land use can be located in what areas and under what conditions.”¹⁵⁴ “Landmark preservation laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons.”¹⁵⁵ If such zoning or landmark preservation laws impose a substantial burden on religious exercise, RLUIPA, as a federal law, will pre-empt the conflicting local laws unless it is the least restrictive means of achieving a compelling government interest.

However, the protections of RLUIPA do not excuse FBOs from following laws and procedures that do not substantially burden their religious exercise. Local governments may still implement zoning and other land use regulations that do not substantially burden religious activity if these laws apply uniformly to religious and non-religious land uses alike.¹⁵⁶ Indeed, “[r]eligious institutions must apply for the same permits, follow the same

¹⁴⁹ 42 U.S.C. § 2000cc(b)(3)(B)

¹⁵⁰ Abney, *supra* note 131 at 10-11.

¹⁵¹ *Id.*

¹⁵² *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act*, *supra* note 142.

¹⁵³ 42 U.S.C. § 2000cc-5(5).

¹⁵⁴ *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act*, *supra* note 142.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

requirements, and go through the same land-use processes as other land users.”¹⁵⁷ Besides obtaining proper permits, religious organizations must also keep their property in compliance with other codes and regulations such as building and fire codes: “Many courts have denied relief to [religious organizations] that do not follow applicable code procedures, either by failing to apply for a permit or failing to fix building and fire code violations.”¹⁵⁸

Even if a FBO believes a local law imposes a substantial burden on its religious exercise, proceeding in violation of such law could have significant consequences. It is risky to proceed with a land use illegal under local law expecting the law will be held in violation of RLUIPA if the case goes to court. Whether a regulation is a substantial burden on a FBO’s religious practice is a question of fact; this answer may be different based on jurisdiction.¹⁵⁹ Without a court declaration that a regulation constitutes a substantial burden, FBOs that proceed with locally prohibited use of land may find themselves liable for any violations of local law, even though they in good faith believe their use is protected under RLUIPA.

Usually, religious institutions must first apply for zoning approval and be denied to have any recourse under RLUIPA.¹⁶⁰ Applying for proper permitting (and appealing any denials with that system) is generally the fastest and most efficient way to ultimately obtain approval for a religious land use.¹⁶¹ Religious institutions and governments are encouraged to attempt to resolve disputes through their established zoning procedures before a filing a RLUIPA lawsuit.¹⁶²

C. Law Enforcement and Individual Rights

The U.S. Constitution guarantees certain rights and protections for all persons; having a home is not a precondition of those rights.¹⁶³ However, unhoused communities are particularly vulnerable to unconstitutional searches, seizures, arrests, and other invasions of

¹⁵⁷ *Id.*

¹⁵⁸ Kelli Stout, *Tent Cities and RLUIPA: How a New Religious-Land-Use Issue Aggravates RLUIPA*, 41 SETON HALL L. REV. 465 at 479

¹⁵⁹ Whether a law or regulation imposes a substantial burden depends on the facts in each situation and the degree to which a land use decision is likely to impair religious exercise. Among other factors, courts consider the size and resources of the burdened party, the actual religious needs of a congregation or individual, any space constraints, and the existence of reasonable alternatives. Lauren B. Langer, *Navigating RLUIPA*, LEAGUE OF CALIFORNIA CITIES (May 6, 2015), <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2015/2015-Spring-Conference/5-2015-Spring-Lauren-Langer-Navigating-RLUIPA-Rece.aspx>. The DOJ has identified some examples of local action that may constitute a substantial burden, including actions that effectively bar or impose a significant restriction on the use of a property for religious activity and those that create significant delay, uncertainty, or expense in constructing or expanding a facility for religious use. *Id.*

¹⁶⁰ Stout, *supra* note 158; *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act*, *supra* note 142.

¹⁶¹ *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act*, *supra* note 142.

¹⁶² *Id.*

¹⁶³ U.S. Const. amend. I-XIV.

privacy.¹⁶⁴ Law enforcement officers often target places like shelters where homeless and poor people are likely to be. Warrant sweeps are also common in shelters.¹⁶⁵ People experiencing homelessness are more likely to have a criminal history than the general population.¹⁶⁶ This vulnerability exists for many reasons, including the difficulty of finding housing (or employment to pay for housing) with a criminal record,¹⁶⁷ the criminalization of homelessness and poverty, and the desperation for resources experienced by many homeless individuals.¹⁶⁸ When society makes the act of surviving in public a crime, the problem of homelessness is only exacerbated.¹⁶⁹ Additionally, shelters serving undocumented immigrants – especially those receiving federal funding – face similar threats of intrusion from immigration authorities, although some federally funded housing programs are open to all regardless of immigration status.¹⁷⁰

While shelters are “not place[s] of asylum from the law,” shelter residents still have the constitutional right to be free from unreasonable search and seizure absent probable cause, and shelter staff are under no legal duty to allow them entry nor to identify residents except

¹⁶⁴ Steven R. Morrison, *The Fourth Amendment’s Applicability to Residents of Homeless Shelters*, 32 HAMLINE L. REV. 319 (2009); *The Courts, the Law and the Homeless – Constitutional Rights*, LIBRARY INDEX, <https://www.libraryindex.com/pages/2316/Law-Courts-Homeless-CONSTITUTIONAL-RIGHTS.html> (last visited Dec. 4, 2017).

¹⁶⁵ Jacquelyn Simone, *Coalition for the Homeless Calls for an End to Warrant Sweeps in Shelters*, COALITION FOR THE HOMELESS (Aug. 2, 2017), <http://www.coalitionforthehomeless.org/coalition-homeless-calls-end-warrant-sweeps-shelters/>; Nina Bernstein, *Police Arrest 125 in Nighttime Raids on Homeless Shelters*, N.Y. TIMES (Jan. 20, 2000), <http://www.nytimes.com/2000/01/20/nyregion/police-arrest-125-in-nighttime-raids-on-homeless-shelters.html>; Ademo Freeman, *Clearlake Police Bust Church Housing Homeless Without Warrant*, COPBLOCK (Mar. 20, 2015), <https://www.copblock.org/116356/clearlake-police-bust-church-housing-homeless-warrant/>; Telephone Interview with Aaron Scott, *supra* note 37; Josh Sanburn, *Is Homelessness a Right? Seattle Grapples With How to Respond to a Growing Crisis*, TIME (Dec. 20, 2016), <http://time.com/4598570/seattle-homelessness-sweeps-tent-encampments/>.

¹⁶⁶ Javier Ortiz & Matthew Dick, Seattle University Homelessness Rights Advocacy Project, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS* (Sara Rankin ed. 2015); Kaya Lurie & Breanne Schuster, Seattle University Homelessness Rights Advocacy Project, *DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS & OTHER MARGINALIZED GROUPS* (Sara Rankin ed., 2015).

¹⁶⁷ Zoe Carpenter, *Think It’s Hard Finding a Place to Live? Try Doing So With a Criminal Record*, NATION (Nov. 4, 2015), <https://www.thenation.com/article/public-housing-criminal-record/>; Pat Hartman, *How to Become Homeless: Have a Criminal Record*, HOUSE THE HOMELESS, INC. (Jan. 31, 2012), <http://www.housethehomeless.org/how-to-become-homeless-have-a-criminal-record/>.

¹⁶⁸ Randeep Ramesh, *A fifth of all homeless people have committed a crime to get off the streets*, GUARDIAN (Dec. 22, 2010), <https://www.theguardian.com/society/2010/dec/23/homeless-committing-crimes-for-shelter>.

¹⁶⁹ Sara Rankin, *The Influence of Exile*, 76 MD. L. REV. 1 (2016); *The Criminalization of Homelessness: Additional Resources*, SEATTLE UNIVERSITY HOMELESS RIGHTS ADVOCACY PROJECT, <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/homeless-rights-advocacy-project/additional-resources>.

¹⁷⁰ Miguel Morales & Leslye E. Orloff, *HUD Programs and Immigrant Eligibility*, NORTHWEST IMMIGRANT WOMEN’S ADVOCACY PROJECT, Feb. 8, 2017, <http://library.niwap.org/wp-content/uploads/2015/pdf/PB-Man-Ch16.2-HUDProgramsImmEligibility-7.10.13.pdf>.

under certain circumstances.¹⁷¹ “Unless someone commits a crime in a shelter or the police come to the shelter looking for a particular person, shelter staff have no legal obligation to identify residents to police.”¹⁷² If law enforcement is looking to question an identified individual as a potential witness or perpetrator, however, shelter staff must comply or they may be charged with obstruction of justice.¹⁷³ If police show up with a search and seizure warrant, they legally may access the premises as authorized by the warrant.¹⁷⁴ However, other circumstances might create an obligation to cooperate.¹⁷⁵ In some unclear cases, it is up to the officers’ discretion whether to charge obstruction of justice.¹⁷⁶

Shelter staff may also face other charges, such as harboring a fugitive¹⁷⁷ or undocumented immigrant,¹⁷⁸ if they refuse to identify residents intending to help them evade capture.¹⁷⁹ Harboring a fugitive means *knowingly* hiding a wanted criminal from police; while courts apply slightly different definitions of the offense, generally, FBOs that do not require ID, perform background checks, or inquire about immigration status will not be held accountable for sheltering a fugitive if they did not know of their status.¹⁸⁰ Undocumented immigrants are fugitives by definition and included in the offense of harboring a fugitive.¹⁸¹

D. Accessibility and Discrimination

Federal law mandates that shelters must be accessible to people with disabilities. Under the Americans with Disabilities Act (ADA), shelters must be accessible due to their

¹⁷¹ *Are shelters legally obligated to maintain a certain standard of cleanliness?*, HOMELESS LAW BLOG, <https://homelesslaw.wordpress.com/2008/03/25/are-shelters-legally-obligated-to-maintain-a-certain-standard-of-cleanliness/> (last visited Dec. 4, 2017); U.S. Const. amend IV.

¹⁷² *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ 18 U.S.C. § 1701.

¹⁷⁸ 8 U.S.C. § 1324.

¹⁷⁹ *Id.*; *Sanctuary Congregations and Harboring FAQ*, AMERICAN CIVIL LIBERTIES UNION <https://www.nwirp.org/wp-content/uploads/2017/03/ACLU-Sanctuary-FAQ-March-2017.pdf> (last visited Dec. 4, 2017).

¹⁸⁰ The federal circuit courts have not settled on a uniform standard and many have adopted their own definition of harboring. *Harboring: Overview of the Law*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., Jun. 13, 2013, https://cliniclegal.org/sites/default/files/harboring_memo_6-13-13_karen_edit.pdf. For example, in the Second Circuit, harboring is “conduct that substantially facilitates an immigrant’s remaining in the U.S. illegally and that prevents the authorities from detecting the individual’s unlawful presence.” *Id.* In the Ninth Circuit, harboring is “conduct that affords shelter to undocumented individuals.” Harboring in the Third Circuit “includes affirmative conduct such as providing shelter, transportation, direction about how to obtain false documentation, or warnings about impending investigations that facilitates a person’s continuing illegal presence in the United States.” *Id.* See also *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171; Michael J. Williams, *Helping Illegal Immigrants: What is the Law?*, JCN ONLINE EXTRA, Mar. 9, 2009, http://download.lww.com/wolterskluwer_vitalstream_com/PermaLink/NCF-JCN/A/NCF-JCN_26_4_2009_09_03_WILLIAMS_200907_SDC1.pdf.

¹⁸¹ 8 U.S.C. § 1324; *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171; *Sanctuary Congregations and Harboring FAQ*, *supra* note 179.

function as places of public accommodation and under the Fair Housing Act (FHA), due to their function as housing.¹⁸² Many states and local jurisdictions have their own civil rights laws that may impose additional accessibility requirements. While FBOs may reserve shelter to members of the same religion or give priority to congregation members, they may not discriminate based on any other protected class, including marital status, disability (including mental illness, addiction, and HIV status), sexual orientation, gender, or gender identity.¹⁸³ Accordingly, FBOs should be familiar with the ADA and the FHA. The following subsections sketch contours of both.

1. *Americans with Disabilities Act*

Homeless shelters are places of public accommodation.¹⁸⁴ While churches and other houses of worship generally are not subject to ADA requirements,¹⁸⁵ parts of their property and buildings used for social services programs must comply with the ADA.¹⁸⁶ They will need to assess whether their facilities are accessible and, if not, what the cost and burden would be to make them so. The ADA recommends a preliminary assessment to identify major accessibility issues before selecting a site for a shelter.¹⁸⁷ This preliminary assessment asks, in part:

Are the entrances accessible?

- Is there a sidewalk connecting the parking and drop-off area to the walkway leading to the building?
- Is there a route without steps from this sidewalk to the main entrance?
 - If no, are there two or fewer steps?
 - If no, is there another entrance without steps connected by a sidewalk to the parking or drop-off area or another alternative for people with mobility issues to gain access?
- Are there accessible routes to all service or activity areas?
- Is there a route without steps from the accessible entrance to each location?
- For locations only accessible via elevator, is there a source of backup power with which the elevator can be operated or other alternatives that ensure a safe exit if an emergency occurs?

¹⁸² *ADA Checklist for Emergency Shelters*, U.S. DEP'T OF JUSTICE (Jul. 6, 2007), <https://www.ada.gov/pcatoolkit/chap7shelterchk.htm>; *A Guide to Fair Housing for Nonprofit Housing & Shelter Providers*, FAIR HOUSING PARTNERS OF WASHINGTON STATE (Apr. 2016), <http://www.kingcounty.gov/-/media/exec/civilrights/documents/NPHO-Shelter.ashx>.

¹⁸³ *A Guide to Fair Housing for Nonprofit Housing & Shelter Providers*, *supra* note 182; Greg C. Cheyne, *Facially Discriminatory Admissions Policies in Homeless Shelters and the Fair Housing Act*, 2009 U. OF CHI. LEGAL FORUM 459 (2009).

¹⁸⁴ 42 U.S.C. § 12181(7)(K).

¹⁸⁵ 42 U.S.C. § 12187.

¹⁸⁶ *Chapter 1: Using the ADA Standards*, U.S. ACCESS BOARD, <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/chapter-1-using-the-ada-standards>.

¹⁸⁷ *ADA Checklist for Emergency Shelters*, *supra* note 182.

- Common shelter areas include:
 - Sleeping area
 - Eating area
 - Supply distribution area
 - Storage
 - Restrooms

Are the restrooms accessible?

- Is there sufficient room for a person who uses a wheelchair or other mobility device to turn around? (minimum: either a circle at least 60" in diameter or a T-shaped space at least 36" in width at each of the three ends of the T)
- Is at least one stall at least 60" wide and 56" deep (for a wall-mounted toilet) or 59" deep (for a floor-mounted toilet)?¹⁸⁸

This checklist is not complete and is only meant to provide a starting point for assessing accessibility, which may also be met by other creative accommodations.

2. Fair Housing Act

The FHA applies to all covered multifamily dwellings, including homeless shelters.¹⁸⁹ There are several requirements dwellings must satisfy to comply:

- Accessible building entrance on an accessible route
- Accessible and usable public and common use areas
- Usable doors
- Accessible routes into and through the covered dwelling unit
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- Reinforced walls for grab bars
- Usable kitchens and bathrooms so an individual using a wheelchair can maneuver about¹⁹⁰

All service providers must comply with applicable civil rights laws.¹⁹¹ However, to be truly inclusive, operators of homeless services should also be aware of their guests' individual

¹⁸⁸ *Id.*

¹⁸⁹ "Dwellings subject to the Act's design and construction requirements include condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, HOPE VI projects, *projects funded with HOME or other federal funds, transitional housing*, single room occupancy units (SROs), *shelters designed as a residence for homeless persons*, dormitories, hospices, extended stay or residential hotels, and more." (emphasis added). *Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act*, JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE (Apr. 30, 2013), <https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

accessibility needs; these needs may not be covered by these laws and may be accommodated by solutions not listed here.¹⁹²

E. Insurance and Liability

While faith leaders should consider insurance needs before opening a shelter, such concerns should not prevent them from going ahead with their shelter plans.¹⁹³ “Sheltering people in congregations is not as difficult as many people assume...People often think about their insurance needs, but...guests are covered just like any other visitors to the building.”¹⁹⁴ “Most concerns about safety, security and liability disappear after a church hosts the program a few times.”¹⁹⁵ Providing housing opens organizations up to some additional liability, however, so insurance companies and local laws may require the organization to purchase certain additional coverage.¹⁹⁶ Shelter residents who suffer illness or injury due to conditions in a shelter may be able to sue based on premises liability.¹⁹⁷ Shelters operators will not be liable for conditions on the premises unless the illness or injury could have been predicted and prevented.¹⁹⁸

III. Operational Considerations

To protect its guests, its congregation, and its surrounding community, there are many details a FBO must consider before providing homeless services. Fortunately, there are many possible models for shelters and other homeless services.¹⁹⁹ “Sheltering people in

¹⁹² See *Making Shelters Accessible to All*, NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE VAWNET, <https://vawnet.org/sc/making-shelters-accessible-all> (last visited Mar. 19, 2018); see also Suzanne Skinner, Seattle University Homeless Rights Advocacy Project, *SHUT OUT: HOW BARRIERS OFTEN PREVENT MEANINGFUL ACCESS TO EMERGENCY SHELTERS* (Sara Rankin ed., 2016) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776421; Martha R. Burt et al, *Strategies for Improving Homeless People’s Access to Mainstream Benefits and Services*, U.S. DEP’T OF HOUSING AND URB. DEV. OFF. OF POL’Y DEV. AND RES., Mar. 2010, <https://www.huduser.gov/portal/publications/StrategiesAccessBenefitsServices.pdf>.

¹⁹³ Bobby Ross, Jr., *Cold nights, warm hearts: Churches become homeless shelters*, CHRISTIAN CHRONICLE (Nov. 17, 2016), <https://christianchronicle.org/cold-nights-warm-hearts-churches-become-homeless-shelters/>

¹⁹⁴ *Id.* (internal quotations omitted)

¹⁹⁵ *Id.*

¹⁹⁶ Anitra L. Freeman, *Hosting a Homeless Shelter*, HOMELESSNESS & POVERTY: HOMELESS NOT HELPLESS, <http://anitra.net/homelessness/faqs/helping/hosting.html>; *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171.

¹⁹⁷ *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171; *Liability for Infections Or Injuries Sustained in a Homeless Shelter*, ZANER HARDEN LAW (Apr. 26, 2016), <http://www.zanerhardenlaw.com/liability-infections-sustained-homeless-shelter>.

¹⁹⁸ *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171.

¹⁹⁹ Malcolm L. Goggin & Deborah A. Orth, *How Faith-Based and Secular Organizations Tackle Housing for the Homeless*, ROCKERFELLER INSTITUTE OF GOV’T (Oct. 2002), http://66.165.155.20/docs/research/10-23-2002_grand_rapids_study.pdf; *A Homeless Services Faith Based Model That Works: The Rotating Shelter*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/2010/11/a-homeless-services-faith-based-model-that-works-the-rotating-shelter/> (last visited Dec. 4, 2017).

congregations is not as difficult as many people assume,” and any FBO that wishes to provide homeless services on its land should be able to find some way to do so.²⁰⁰

FBOs that are interested in becoming shelter hosts must assess the space and resources available to them and the extent of the commitment they can make to helping their unhoused neighbors, and then decide on an operational model for the services they choose to provide.

A. Location

One key consideration for religious institutions who wish to serve the homeless community on their property is location. The services may be located within existing spaces, or a congregation may choose to build additional structures or accessory dwelling units (ADUs).²⁰¹ Some service models operate mainly outdoors, such as encampments and safe parking lots.²⁰²

WAYS TO PROVIDE HOMELESS SERVICES	
LOCATION	
Indoor	Encampment
Safe Parking Lot	Accessory Dwelling Unit
HOURS	
24-Hours	Day Only
Overnight Only	
TIME OF YEAR	
Year-Round	Emergency Cold Weather (temperature threshold)
Cold Weather Months	
SERVICES	
Shelter	Other Supportive Services (medical care, meals, etc.)

²⁰⁰ Ross, *supra* note 193.

²⁰¹ See Tran Dinh, Seattle University Homeless Rights Advocacy Project & David A. Brewster, Anna C. Fullerton, Gregory D. Huckaby, Mamie L. Parks, University of Denver Sturm College of Law Homeless Advocacy Policy Project, YES, IN MY BACKYARD: BUILDING ADUS TO ADDRESS HOMELESSNESS (Sara Rankin, Nantiya Ruan, Elie Zweibel eds., 2018).

²⁰² Encampments and safe parking lots come with their own unique considerations, challenges, and benefits. See Evanie Parr, Seattle University Homeless Rights Advocacy Project, IT TAKES A VILLAGE: PRACTICAL GUIDANCE FOR AUTHORIZED HOMELESS ENCAMPMENTS (Sara Rankin ed., 2018); T. Ray Ivey & Jodilyn L. Gilleland, Seattle University Homeless Rights Advocacy Project, HIDDEN IN PLAIN SIGHT: FINDING SAFE PARKING FOR VEHICLE RESIDENTS (Sara Rankin ed., 2018).

Regardless of the shelter model, ideally, the space selected should be available for use for at least 10 hours on nights when the shelter is open. This allows for guests to get settled in at night, sleep for eight hours, and prepare to leave in the morning.²⁰³ Another consideration is whether the chosen space can be left as-is after guests leave or whether it will be used for other activities during the day, requiring time to move any furniture and other items around. Shelters may be easiest to manage when hosted in one space with good visibility, rather than in separate rooms that each require staff supervision.²⁰⁴

Besides sleeping and living space for guests, shelter hosts should consider storage space for cots or sleeping mats if they will be put away during the day, and for guests' belongings if they may leave them there.²⁰⁵ Guests also must have access to restrooms with a toilet, sink, and soap, at a minimum.²⁰⁶ Areas of the building and grounds that guests will have access to, such as an outdoor smoking area, should be clearly designated.²⁰⁷

Whatever location an organization decides on, it must also determine how many people that space can accommodate and know this limit before admitting guests.²⁰⁸ Identification of an overflow area in cases of emergency may be helpful.²⁰⁹

B. Service and Shelter Model

In addition to identifying the location, organizations must decide what types of services to provide. Shelter is, of course, a very important element of homeless services. However, homeless services is not limited to shelter and may also include other social services.²¹⁰ While any organization committed to ending homelessness should be invested in the long-term goal of getting their clients into stable, long-term housing, there are still many roles for organizations not equipped to provide such housing.²¹¹ While models and terminology may vary, there are three main types of non-permanent shelters for people experiencing homelessness: emergency shelters, year-round shelters, and transitional or supportive housing.²¹²

²⁰³ Freeman, *supra* note 196.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Guidelines for Making Your Church a Temporary Shelter for Disaster Victims*, BROTHERHOOD MUTUAL, <https://www.brotherhoodmutual.com/resources/safety-library/risk-management-articles/disasters-emergencies-and-health/disaster-preparation-and-response/guidelines-for-making-your-church-a-temporary-shelter-for-disaster-victims/> (last visited Dec. 4, 2017).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Freeman, *supra* note 196

²¹¹ Chaves & Eagle, *supra* note 14.

²¹² Freeman, *supra* note 196; Rachelle Williams, *Types of Homeless Shelters*, HUBPAGES (Oct. 2, 2011), <https://hubpages.com/politics/Types-of-Homeless-Shelters>; Gary Warth, *Various names for homeless help can be confusing*, SAN DIEGO TRIBUNE, Aug. 30, 2016, <http://www.sandiegouniontribune.com/news/homelessness/sdut-housing-homelessness-different-terms-2016aug30-story.html>.

1. Emergency/Cold Weather Shelters

Emergency shelters, sometimes called night shelters, cold weather shelters, or some variation on these terms, are open only during hazardous or extreme conditions – often during cold winter months or other times of extreme weather, and often only during the night.²¹³ These shelters may run during set days or weeks, or may open only when certain environmental criteria are met, such as temperature or wind chill dropping below a certain point; emergency shelters may also be a one-time response to natural disaster.²¹⁴

Extreme heat is also a significant concern: “It’s a common misconception that cold exposure is the deadliest weather the homeless face; dehydration during the summer is actually a bigger cause of death.”²¹⁵ Unhoused people are also at risk for health issues due to excessive heat leading to dehydration, heatstroke, or hyperthermia.²¹⁶ Organizations in areas where temperatures regularly reach over 95 degrees should consider whether a summer emergency weather shelter would be useful in their community.²¹⁷

The homeless population is at an increased risk of health issues related to environmental exposure, including hypothermia and frostbite.²¹⁸ Unsheltered people face prolonged exposure to the cold and greater susceptibility to such problems due to inadequate clothing, substance use, malnutrition, and underlying health problems and disabilities.²¹⁹ Unfortunately, many emergency winter shelters do not open until temperatures are significantly below the temperature at which hypothermia can set in: 32-50 degrees Fahrenheit.²²⁰ Risk of exposure-related health issues depends not only on temperature, but also on factors such as wind and precipitation, so shelters may want to open at lower

²¹³ Williams, *supra* note 212; *Preparing to open your church as a Night Shelter*, EDWARDS INSURANCE BROKERS (Oct. 11, 2017), <https://www.edwardsinsurance.co.uk/advice/preparing-open-church-night-shelter/>; *Night Shelter Guidance*, ECCLESIASTICAL INSURANCE, <https://www.ecclesiastical.com/churchmatters/images/winter%20night%20shelter%20guidance.pdf> (last visited Dec. 4, 2017); Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

²¹⁴ *Winter Homeless Services: Bringing Our Neighbors in from the Cold*, NATIONAL COALITION FOR THE HOMELESS (Jan. 2010), http://nationalhomeless.org/wp-content/uploads/2014/02/Winter_weather_report.pdf; Justine Brown, *Churches Play a Growing Role in Emergency Management*, EMERGENCY MGMNT (Apr. 28, 2015) <http://www.govtech.com/em/disaster/Churches-Playing-Growing-Role-Emergency-Management.html>.

²¹⁵ *Top Five Ways the Summer is Dangerous for the Homeless*, THRIVE DC (Jun. 22, 2016), <https://www.thrivedc.org/top-five-ways-the-summer-is-dangerous-for-the-homeless/>.

²¹⁶ *Id.*; Joel John Roberts, *Rising Heat Means Higher Risks for Homeless Persons*, POVERTY INSIGHTS (Jul. 18, 2011), <http://www.povertyinsights.org/2011/07/18/rising-heat-means-higher-risks-for-homeless-persons/>; *Summer Heat and the Homeless: What are the Risks?*, MY BROTHER’S KEEPER (Jun. 9, 2016), <http://www.mybrotherskeeperbaltimore.org/blog/summer-heat-homeless-risks/>.

²¹⁷ *Top Five Ways the Summer is Dangerous for the Homeless*, *supra* note 215.

²¹⁸ *Winter Homeless Services*, *supra* note 214.

²¹⁹ *Id.*

²²⁰ *The Dangers of Cold Weather*, NATIONAL COALITION FOR THE HOMELESS (Feb. 7, 2014), <http://nationalhomeless.org/winter-homelessness/>.

temperatures during rain or snow fall and assess their cut-off temperature based on wind chill rather than actual temperature.²²¹ To minimize weather-related risks:

Temperature cut-offs for winter shelters should be avoided, since the effectiveness of a shelter is decreased when the population it serves does not know, from night to night, whether the shelter will be open. If a temperature cut-off is necessary, due to financial or other reasons, the cut-off should be at least 40° F in order to prevent the most dangerous cases of hypothermia...If it is possible to keep services open every night during the winter, regardless of temperature, the winter season should be defined as October through April. This allows homeless people to find shelter during the transitions from fall to winter and from winter to spring...Additionally, winter services must be available to all homeless persons, without restrictions...past bans and other restrictions should be waived on nights when the temperature is lower than 40° F...The risk of developing hypothermia is greatly increased for those who have been using substances, especially alcohol. People who are inebriated must be allowed to spend the night indoors during cold weather. If needed, they may be separated from those who are sober, as long as they can remain safe and warm.²²²

Congregations that cannot stay open all winter may want to look into working with other organizations to create a rotating shelter – like Congregation Har HaShem did in the above case study.²²³ Emergency winter shelters often rotate on a nightly basis between seven (or more) congregations, giving each a set night of the week to host.²²⁴ This model guarantees that shelter will be available throughout the winter while also lessening the burden on each partner organization.

2. Year-round Shelters

Where emergency shelters leave off, year-round shelters often take over. Typically, these shelters allow for longer stays than emergency shelters. They may have services during the day as well, such as meals or vocational training. Shelters that allow guests to stay for multiple days in a row²²⁵ must decide whether to tear down shelter equipment and furniture during the day. This decision may depend on available storage space and whether space for other activities is needed during the day, and availability of staff or volunteers to tear down and set up.²²⁶ Shelter guests who plan to return for several days may wish to leave their

²²¹ *Winter Homeless Services*, *supra* note 214.

²²² *Id.* at 15.

²²³ See *supra* Part I, Section (B).

²²⁴ *Night Shelter Guidance*, ECCLESIASTICAL INSURANCE, 3, <https://www.ecclesiastical.com/churchmatters/images/winter%20night%20shelter%20guidance.pdf> (last visited Dec. 4, 2017); Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68.

²²⁵ These are usually year-round shelters, although cold-weather shelters that operate all winter may also allow guests to stay for multiple days.

²²⁶ Freeman, *supra* note 196.

belongings on site; shelter coordinators should assess whether they have such storage capacity and whether they wish to take on the responsibility of storing guests' personal possessions.

3. Transitional/Supportive Housing

Transitional or supportive housing provides a bridge between shelters and permanent housing.²²⁷ Such housing requires a greater commitment from the host.²²⁸ Transitional housing programs “provide families [or individuals] with a housing unit, usually for a period of six to twenty-four months, along with supportive services.”²²⁹ These programs require space dedicated exclusively to housing guests. Often, this space is divided into apartments; other times, a congregate housing model may be used.²³⁰ Guests generally may come and go as they please, though curfews and other behavioral rules may be implemented.²³¹

Because transitional housing aims to equip its residents to escape homelessness and move into permanent housing, supportive services are an essential component.²³² Faith-based transitional housing programs with a wide range of supportive services and a holistic approach to moving their guests into permanent housing have achieved long-term transformational results.²³³ Services may include vocational training, child care, transportation, counseling, and substance abuse treatment.²³⁴

4. Supportive Services

Some FBOs may find they cannot provide overnight shelter, but still wish to serve their unhoused neighbors. Others may wish to provide other services besides – or in addition to – housing. Many types of services can benefit the homeless community:²³⁵

- Meals
- Food Pantry
- Clothing
- Medical Care

²²⁷ Ellen Hart-Shegos, *The Supportive Housing Continuum: A Model for Housing Homeless Families*, FAMILY HOUSING FUND, 2 (1999), http://www.fhfund.org/wp-content/uploads/2014/10/Supportive_Continuum_Report.pdf.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*; Goggin & Orth, *supra* note 199. Congregate housing is “a type of housing in which each individual or family has a private bedroom or living quarters but shares with other residents a common dining room, recreational room, or other facilities.” *Congregate housing*, DICTIONARY.COM, <http://www.dictionary.com/browse/congregate-housing> (last visited Mar. 3, 2018).

²³¹ Goggin & Orth, *supra* note 199.

²³² Hart-Shegos, *supra* note 227 at 12.

²³³ See Douglas Edward Luffborough III, *Faith and Homelessness: Examining the Influence of the Faith-Based Component of a Transitional Housing Program on the Attitudes and Behaviors of Homeless Men*, DIGITAL U. OF SAN DIEGO DISSERTATIONS 78 (2017), <http://digital.sandiego.edu/dissertations/78>.

²³⁴ *Id.*; Goggin & Orth, *supra* note 199.

²³⁵ See Bass, *supra* note 14, at 314; Hart-Shegos, *supra* note 227; Goggin & Orth, *supra* note 199.

- Addiction Services
- Vocational Training
- Child Care
- Transportation
- Laundry
- Storage
- Day Shelters
- Mental Health Counseling
- Dental Care
- Haircuts
- Navigation Centers²³⁶

Depending on an organization's community, local government and secular non-profits may already make these services available to people in need, but where they do not, religious organizations can help to fill the gap.²³⁷

C. Staffing and Volunteers

Shelters may be run by staff or volunteers or be self-managed by shelter guests – or a mix of the three.²³⁸ Shelters staffed by paid employees come with a cost, of course. Many shelters operate with all volunteer staffing.²³⁹ Religious congregations often have a built-in volunteer base in their members.²⁴⁰ Self-managed shelters are made possible by organizing within the homeless and formerly homeless community.²⁴¹ A responsible shelter member may be assigned to pick up an entry key and other supplies each night.²⁴² Shelter members may set up the facility themselves, then tear it down and clean up after themselves in the morning.²⁴³ Often, self-managed facilities will be governed by rules the guests agree upon themselves.²⁴⁴ Mixed staffing models may use both staff and volunteers, or be mainly self-managed with one staff or volunteer facilitator present.²⁴⁵

²³⁶ “Navigation Centers provide these otherwise unsheltered [people] room and board while case managers work to connect them to income, public benefits, health services, shelter, and housing. Navigation Centers are different from traditional shelters in that they have few barriers to entry and intensive case management. Unlike traditional shelters, people with partners, pets and possessions are welcome at Navigation Centers.” *San Francisco Navigation Centers: A housing focused, welcoming, short-term shelter model*, SAN FRANCISCO DEP'T OF HOMELESSNESS AND SUPPORTIVE HOUSING, <http://hsh.sfgov.org/services/emergencyshelter/navigation-centers/> (last visited Mar. 3, 2018)

²³⁷ Email from Cliff Cantor, Attorney, Law Offices of Clifford A. Cantor, P.C. (Dec. 2, 2017) (on file with author).

²³⁸ Freeman, *supra* note 196.

²³⁹ *Id.*

²⁴⁰ *Night Shelter Guidance*, *supra* note 224.

²⁴¹ Freeman, *supra* note 196; see Betty Reid Mandel, *Homeless Shelters: A Feeble Response to Homelessness*, XI-3 NEW POLITICS 43 (2007), <http://newpol.org/content/homeless-shelters-feeble-response-homelessness>.

²⁴² Freeman, *supra* note 196.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

D. Client Intake and Management

Organizations that provide shelter and other social services often need a system to process and keep track of their clients. Potential hosts should consider what information they truly need from clients to properly manage their shelter and ensure the safety and privacy of all guests. Hosts also should decide whether they want to operate a drop-in shelter open to anyone within their target population, or whether they want to identify guests ahead of time. For example, many faith-based shelters let social service agencies refer potential guests rather than simply announcing the shelter is open and waiting for guests to show up; there are can be significant benefits from using a referral agency – these agencies can have knowledge and resources to assess the needs of both clients and service providers, and they may even provide bus vouchers or other transportation for clients.²⁴⁶

Sometimes, due to location or funding, shelters will be required to enter specified information into centralized, coordinated or linked management systems.²⁴⁷ For example, to apply for federal homeless assistance funds, each interested community must come together to form a Continuum of Care (CoC)²⁴⁸; each CoC must use a Homeless Management Information System (HMIS)²⁴⁹ to coordinate between all of its social service providers.²⁵⁰ The HMIS requirement aims to “help communities prioritize assistance based on vulnerability and severity of service needs to ensure that people who need assistance the most can receive it in a timely manner” and “provide information about service needs and gaps to help communities plan their assistance and identify needed resources.”²⁵¹ However, the information required by

²⁴⁶ *Id.*

²⁴⁷ *Homeless Management Information System*, HUD EXCHANGE, <https://www.hudexchange.info/programs/hmis/> (last visited Dec. 4, 2017); *Centralized Intake for Helping People Experiencing Homelessness: Overview, Community Profiles, and Resources*, HUD EXCHANGE, https://www.hudexchange.info/resources/documents/HPRP_CentralizedIntake.pdf (last visited Dec. 4, 2017).

²⁴⁸ “A Continuum of Care (CoC) is a regional or local planning body that coordinates housing and services funding for homeless families and individuals [in accordance with Department of Housing and Urban Development (HUD) guidelines in order to qualify for HUD funding]...HUD identifies four necessary parts of a continuum: [1] Outreach, intake, and assessment in order to identify service and housing needs and provide a link to the appropriate level of both; [2] Emergency shelter to provide an immediate and safe alternative to sleeping on the streets, especially for homeless families with children; [3] Transitional housing with supportive services to allow for the development of skills that will be needed once permanently housed; and [4] Permanent and permanent supportive housing to provide individuals and families with an affordable place to live with services if needed.” *What is a Continuum of Care?*, National Alliance to End Homelessness, <https://endhomelessness.org/resource/what-is-a-continuum-of-care/> (Jan. 14, 2010).

²⁴⁹ “A Homeless Management Information System (HMIS) is a local information technology system used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. Each Continuum of Care is responsible for selecting an HMIS software solution that complies with HUD’s data collection, management, and reporting standards.” *Homeless Management Information System*, *supra* note 247.

²⁵⁰ *Centralized Intake for Helping People Experiencing Homelessness*, *supra* note 247.

²⁵¹ *Coordinated Entry Policy Brief*, HUD EXCHANGE, 1, <https://www.hudexchange.info/resources/documents/Coordinated-Entry-Policy-Brief.pdf> (last visited Dec. 4, 2017).

HMIS and other centralized management systems can infringe significantly on guests' privacy by requiring such personal details as social security number and disabling condition.²⁵² For example, domestic violence victims often must keep secret their location and even the fact that they are seeking shelter to protect their safety.²⁵³

Organizations that are not obligated to use a centralized management system or intake process as a condition of government funding can decide which information to collect and how to manage it based on their own needs and resources. Gathering names and emergency contacts from all guests, and relevant medical information such as allergies, is often prudent.²⁵⁴ However, intake procedures that require more can sometimes present barriers that prevent people in need from accessing the shelter. For instance, requiring a photo ID, driver's license, or social security number will exclude many potential guests.²⁵⁵ One survey found that 54% of clients at surveyed organizations were turned away because of a lack of photo ID.²⁵⁶ Many unhoused people "lack photo identification because of the difficulty of maintaining important documents while homeless."²⁵⁷ Obtaining identification is often impossible due to several factors: the cost is prohibitive for people in poverty, understanding required documentation and interfacing with licensing agencies can be overwhelmingly complicated, residency requirements make it next to impossible to get identification without an address, and the unhoused often do not have access to the requisite documentation – usually a birth certificate – to obtain a photo ID for the same reasons they have no photo ID in the first place.²⁵⁸

Homeless immigrants, especially undocumented and non-citizen immigrants, face these challenges in addition to unique identification barriers. They may have lost their identification from their home country on their journey here. If they have identification, it may not be accepted either at shelters or at licensing agencies: those without social security

²⁵² All CoC funded programs must collect up to 15 Universal Data Elements, including such personal information as social security number, date of birth, race, gender, disabling condition, and living situation. *Continuum of Care (CoC) HMIS Program Manual*, U.S. DEPT. OF HOUSING AND URBAN DEV'T (Sept. 2017), <https://www.hudexchange.info/resources/documents/CoC-Program-HMIS-Manual.pdf>.

²⁵³ *Homeless Management Information Systems and Domestic Violence*, ELECTRONIC PRIVACY INFORMATION CENTER, <https://epic.org/privacy/dv/hmis.html> (last visited Dec. 4, 2017).

²⁵⁴ *Guidelines for Making Your Church a Temporary Shelter for Disaster Victims*, *supra* note 207.

²⁵⁵ *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY, 7 (Apr. 2004), https://www.nlchp.org/documents/ID_Barriers; Mileka Lincoln, *Without ID, many homeless are unable to get help or into shelters*, HAWAII NEWS NOW (Jul. 18, 2014), <http://www.hawaiinewsnow.com/story/26058747/without-id-many-homeless-are-unable-to-get-help-or-into-shelters>; Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle*, PEW CHARITABLE TRUST (May 15, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle>; Esther Yu His Lee & Alejandro Davila Frago, *No Home, No Papers, No Help: The Plight Of Undocumented Immigrants On The Street*, THINKPROGRESS (Jun. 29, 2016), <https://thinkprogress.org/no-home-no-papers-no-help-the-plight-of-undocumented-immigrants-on-the-street-e613d31465c4/>.

²⁵⁶ *Photo Identification Barriers Faced by Homeless Persons*, *supra* note 255 at 5.

²⁵⁷ *Id.* at 4.

²⁵⁸ *Id.*

numbers, including many non-citizens and all undocumented immigrants, will be excluded from any service provider that requires it.²⁵⁹

Other types of intake requirements may also act as barriers. Sometimes, the volume of questions asked at intake is simply overwhelming or feels like a general invasion of privacy.²⁶⁰ Often, the most vulnerable communities are excluded from shelters, either expressly or effectively, for reasons directly related to their vulnerability.²⁶¹ Gender identification requirements, for example, often result in exclusion: according to one study, 29% of transgender individuals who tried to access shelter were denied entry altogether, and 47% percent left shelter due to ill-treatment, including harassment and being housed according to their birth gender rather than their gender identity.²⁶² Others commonly excluded include people with substance abuse issues, people with criminal history, and people on sex offender registries.²⁶³ Some shelters perform warrant checks during intake and alert law enforcement to pick up anyone who seeks shelter with an outstanding warrant.²⁶⁴ Service providers who exclude these vulnerable groups, regardless of good intentions, are complicit in the continued homelessness of those they exclude; low-barrier entry requirements are essential to effective service provision.

E. Codes of Conduct

To set clear expectations and maintain a safe, welcoming space, shelter hosts should come up with a code of conduct or other document that expresses what shelter guests may do.²⁶⁵ However, to avoid being overly restrictive and excluding guests either in fact or in effect, hosts should impose only those rules to protect guests' health and safety.²⁶⁶

Most shelters have rules prohibiting violence and banning alcohol, drugs, and weapons on the premises.²⁶⁷ Shelters commonly have extensive lists of additional rules, however, that are often overly restrictive.²⁶⁸ For example, besides a prohibition on drugs and alcohol, many also prohibit shelter guests from being intoxicated.²⁶⁹ However, this exclusion may have

²⁵⁹ *Id.* at 8; Lee & Fragoso, *supra* note 255.

²⁶⁰ Mandel, *supra* note 241.

²⁶¹ Skinner, *supra* note 166.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ Wholesale warrant checks like this may be unconstitutional, but the law has not yet been completely settled in this area. Email from Cliff Cantor, *supra* note 237.

²⁶⁵ Telephone Interview with Aaron Scott, *supra* note 37; *Night Shelter Guide*, *supra* note 224; Freeman, *supra* note 196.

²⁶⁶ See Brenda J. Proffitt, *Workplace Violence: Prevention and Intervention – Guidelines for Homeless Service Providers*, HEALTH CARE FOR THE HOMELESS CLINICIANS' NETWORK (Aug. 2011), <http://www.nhchc.org/wp-content/uploads/2011/10/WorkplaceSafety.pdf>.

²⁶⁷ Freeman, *supra* note 196.

²⁶⁸ Rankin, *supra* note 169.

²⁶⁹ Freeman, *supra* note 196; Telephone Interview with Aaron Scott, *supra* note 37.

deadly consequences (for instance, during cold weather temperatures because intoxication increases the risk of hypothermia and frostbite).²⁷⁰

Shelter rules may be informed by myths and stereotypes about poverty and homelessness that commonly paint vulnerable people as incompetent, lazy, or even criminal.²⁷¹

By making many aspects of their programs mandatory . . . shelters give the impression that homeless people will not take the initiative on their own to look for work or housing, enroll their children in school, or keep their living spaces clean. They must be forced to do so. By mandating budgeting classes, shelters suggest that people become homeless in part because they are irresponsible with their money. It is in a sense a symbiotic relationship: shelter programs influence the ways housed people think about homelessness, the views of the housed public -- whether ordinary citizens or policymakers -- affect the formation of shelter programs and how such programs treat homeless people.²⁷²

Common requirements that govern shelters include adherence to a curfew, inspection of personal belongings, submission to a drug test, restrictions on wardrobe and other forms of personal expression, cleaning up after oneself and contributing to general shelter upkeep and cleanliness, and prohibition of curse words.²⁷³ Prohibitions on pets are also commonly cited as reasons unhoused people do not make use of homeless shelters.²⁷⁴ Transitional housing models often require residents to progress through a series of steps before qualifying for permanent housing, setting them back to the beginning or kicking them out if they do not complete a step.²⁷⁵

Many rules ostensibly connect to protecting the health and safety of shelter residents and staff; others are aimed at preparing guests to move into permanent housing by teaching personal responsibility.²⁷⁶ However, some rules can also undermine guests' rights to

²⁷⁰ *Winter Homeless Services*, *supra* note 214 at 5; Joanne Silberner, *A Homeless Shelter for Alcoholics*, NPR (Jul. 21, 2003), <http://www.npr.org/news/specials/housingfirst/nprstories/O3O721.alcoholic/index.html>; *supra* Section (B)(i).

²⁷¹ Mandel, *supra* note 241.

²⁷² JEAN CALTERONE WILLIAMS, *A ROOF OVER MY HEAD* (2003).

²⁷³ Mandel, *supra* note 241; Skinner, *supra* note 160; *Night Shelter Guidance*, *supra* note 224; Dr. John A. Garcia & Dr. Kelvin Jasek-Rysdahl, *Community Inquiry: Homeless Shelter in Turlock*, CAL. U. CTR. FOR PUBLIC POLICY STUDIES, 69 (Aug. 2007), https://www.csustan.edu/sites/default/files/Social_Work/documents/CommunityInquiry-HomelessShelterinTurlockReport.pdf; Rui Kaneya, *How Ditching The Rulebook Helped This Homeless Shelter Get People Off The Street*, HUFFINGTON POST (Jun. 9, 2015), https://www.huffingtonpost.com/2015/06/09/hawaii-next-step-homeless-shelter_n_7489214.html.

²⁷⁴ See Ruby Aliment, Seattle University Homeless Advocacy Rights Project, NO PETS ALLOWED: DISCRIMINATION, HOMELESSNESS & PET OWNERSHIP (Sara Rankin & Kaya Lurie eds., 2016); Rankin, *supra* note 169; Mandel, *supra* note 241; Klyssa Shay, *Why Don't Homeless People Use Shelters?*, SOAPBOXIE (Jan. 27, 2017), https://soapboxie.com/social-issues/why_homeless_people_avoid_shelters.

²⁷⁵ Mandel, *supra* note 241; Goggin & Orth, *supra* note 199.

²⁷⁶ Kaneya, *supra* note 273.

autonomy, dignity, and privacy and deter many from seeking services at all.²⁷⁷ Moreover, they do not necessarily result in better outcomes.²⁷⁸

One common type of rule imposed by FBOs are faith-related requirements, such as attending worship services.²⁷⁹ This can exclude not only people of other faiths or no faith,²⁸⁰ but may exclude people who are frowned upon by the faith of the organization; this is often true for the LGBTQ community.²⁸¹ However, there is also evidence to suggest that FBOs, particularly those who integrate their faith into their values and service delivery, are more likely to address their clients' needs holistically, focusing on both body and spirit, and their staff is perceived as more caring and dedicated.²⁸²

F. Public Health and Safety

By taking proper safety precautions, shelter hosts can minimize risk for themselves, their guests, and the surrounding neighborhood. Many shelters are plagued by dangerous conditions: a New York City audit found, for example, that 87% of shelters' conditions threatened the health or safety of residents, including over half with rat, rodent, or other pest infestations.²⁸³ The prevalence of these conditions often prevent people in need from seeking shelter at these facilities because they perceive sleeping on the street to be safer or more sanitary.²⁸⁴

At a minimum, shelters must comply with any applicable public health and safety regulations, including fire safety codes, building codes, residential codes, and health codes.²⁸⁵

²⁷⁷ *Id.*; Rankin, *supra* note 169; Nina Bernstein, *Strict Shelter Rules Force Many Families Out*, N.Y. TIMES (Nov. 29, 1999), <http://www.nytimes.com/1999/11/29/nyregion/strict-shelter-rules-force-many-families-out.html>.

²⁷⁸ Kaneya, *supra* note 272.

²⁷⁹ Rankin, *supra* note 169; Bob Brigham, *Shelter for homeless women accused of requiring attendance and tithing at Alabama's largest megachurch*, RAWSTORY (Oct. 21, 2017), <https://www.rawstory.com/2017/10/shelter-for-homeless-women-accused-of-requiring-attendance-and-tithing-at-alabamas-largest-megachurch/>; Carey Fuller, *Homeless Shelter Systems and What They Don't Tell You*, HUFFINGTON POST (Dec. 27, 2011), https://www.huffingtonpost.com/carey-fuller/homeless-shelter-parents_b_1035952.html.

²⁸⁰ Jackie Spinner, *Muslim Women Who Become Homeless Have Limited Options*, WASH. POST (Dec. 29, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/28/AR20071228O2493.html>.

²⁸¹ Fuller, *supra* note 279; Rankin, *supra* note 169; Garcia & Jasek-Rysdahl, *supra* note 273 at 69; *Know Your Rights: Housing and Homeless Shelters*, NATIONAL CENTER FOR TRANSGENDER EQUALITY, <https://www.transequality.org/know-your-rights/housing-and-homeless-shelters>.

²⁸² Goggin & Orth, *supra* note 199 at 43.

²⁸³ Shay, *supra* note 274; Erin Durkin, *City Controller audit finds 87% of homeless units threaten residents' health or safety*, N.Y. DAILY NEWS (Dec. 21, 2015), www.nydailynews.com/new-york/manhattan/87-city-homeless-shelters-unsafe-living-conditions-article-1.2473026; *Report: Health and Safety Issues at Homeless Shelters Need be Addressed*, MY CHAMPLAIN VALLEY, <http://www.mychamplainvalley.com/news/report-health-and-safety-issues-at-homeless-shelters-need-be-addressed/490450002>.

²⁸⁴ Mandel, *supra* note 241; Shay, *supra* note 274; Durkin, *supra* note 283.

²⁸⁵ *Are shelters legally obligated to maintain a certain standard of cleanliness?*, *supra* note 171; *Night Shelter Guidance*, *supra* note 224.

Organizations that provide meals must to comply with food safety regulations, and those with employees must follow employment health and safety regulations.²⁸⁶

Complying with these regulations protects guests and shields hosts from fines due to violations, but does not necessarily guarantee the health and safety of residents, staff, or neighbors nor does it eliminate chances of a legal challenge.²⁸⁷ Organizational hosts should take additional precautions beyond those mandated by health and safety law based on circumstances, including location (within the community and the actual space occupied by residents), needs of the population served, natural disaster risk factors, and communicable disease risk factors.²⁸⁸

G. Organizational Partnerships

Faith-based homeless shelters often partner with other agencies, including secular non-profits, local governments, and other FBOs.²⁸⁹ One common type of partnership is with a referring agency. Partnerships between faith-based host sites and managing partner agencies are also common, as are shelters that rotate between host organizations. Sometimes, both types of partnerships are in play, as when an umbrella managing agency coordinates a rotating shelter for several hosts.²⁹⁰ “The key to being a good collaborator is to focus on doing what you do well and partnering with others who are better at serving in other areas.”²⁹¹

Partnering with other organizations presents potential advantages and disadvantages. Benefits to organizational partnerships include shared liability, a decreased burden on the host organization, and the expertise and experience that secular non-profit and government social service agencies can provide. This relationship enables sharing of resources and allows each partner to concentrate on the resources available to them and the services they are most adept at providing.²⁹² Agencies that focus primarily on social service provision are likely to have access to resources like funding, training, supplies, and volunteers and often have

²⁸⁶ Are shelters legally obligated to maintain a certain standard of cleanliness?, *supra* note 171; *Night Shelter Guidance*, *supra* note 224.

²⁸⁷ Are shelters legally obligated to maintain a certain standard of cleanliness?, *supra* note 171.

²⁸⁸ *Id.*; Shay, *supra* note 274; *Recommended Shelter Health and Safety Best Practice Guidelines*, PUBLIC HEALTH SEATTLE & KING COUNTY (Jul. 2005), <http://www.kingcounty.gov/depts/health/locations/homeless-health/healthcare-for-the-homeless/~media/depts/health/homeless-health/healthcare-for-the-homeless/documents/shelter-health-safety-guidelines.ashx>.

²⁸⁹ Goggin & Orth, *supra* note 199; *A Homeless Services Faith Based Model That Works*, *supra* note 199; *Night Shelter Guidance*, *supra* note 224; *Permitted Encampment Evaluation*, CITY OF SEATTLE (Jun. 28, 2017), <http://www.seattle.gov/documents/departments/humanservices/aboutus/final%202017%20permitted%20encampment%20evaluation.pdf>.

²⁹⁰ Freeman, *supra* note 196; Goggin & Orth, *supra* note 199; *A Homeless Services Faith Based Model That Works*, *supra* note 199; Telephone Interview with Sara-Jane Cohen & Bill Cohen, *supra* note 68; Interview with Bill Kirlin-Hackett, *supra* note 26.

²⁹¹ Johnson et al, *supra* note 14.

²⁹² *Id.*; Freeman, *supra* note 196; *Night Shelter Guidance*, *supra* note 224; Interview with Bill Kirlin-Hackett, *supra* note 26; *Top four tips for starting a disaster shelter at your church*, CHURCH EXECUTIVE (Jul. 1, 2009), <https://churchexecutive.com/archives/top-four-tips-for-starting-a-disaster-shelter-at-your-church>.

pre-existing relationships with a client base.²⁹³ Regardless, FBOs are perceived to be superior service providers and are more likely to take a holistic and caring approach to service provision than secular agencies.²⁹⁴

There are also disadvantages to partnering with another agency. Hosts that are managed by outside agencies lose some control over what goes on in their space.²⁹⁵ And the need to coordinate between partners and balance responsibilities may require some effort and increases the potential for conflict.²⁹⁶ Hosts may also face restrictions on religious aspects of their program based on funding source.²⁹⁷

H. Funding

An organization's ability to provide shelter depends largely on its financial resources.²⁹⁸ Funding may come from federal or local governments, organizational partners, and congregation and community members.²⁹⁹ Local social service agencies can be helpful in connecting potential hosts with potential sources of funding.³⁰⁰

[O]rganizations may use government money only to support the non-religious social services that they provide. Therefore, faith-based organizations that receive direct governmental funds should take steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer. Such organizations should also carefully account for their use of all government money.³⁰¹

Cities commonly use funds such as the Community Development Block Grant fund, Redevelopment funds, HOME funds, and emergency shelter funds to support various service providers, including religious organizations that provide shelter.³⁰²

IV. Community Education and Outreach

Besides the legal and operational aspects of running a shelter, FBOs must also consider how their efforts will be received both within and outside the congregation.

²⁹³ *Top four tips for starting a disaster shelter at your church*, *supra* note 292.

²⁹⁴ Goggin & Orth, *supra* note 199; *Faith-Based Programs Still Popular, Less Visible*, *supra* note 18.

²⁹⁵ Freeman, *supra* note 196; *Church partnerships: 7 steps to make big ideas reality*, UNITED METHODIST COMMUNICATIONS, <http://www.umcom.org/learn/church-partnerships-7-steps-to-make-big-ideas-reality>.

²⁹⁶ *Church partnerships: 7 steps to make big ideas reality*, *supra* note 295.

²⁹⁷ *Separation of Church and State in HUD Programs*, U.S. DEP'T OF HOUSING AND URBAN DEV'T, (Apr. 9, 2010), <https://archives.hud.gov/initiatives/fbci/churchst.cfm>.

²⁹⁸ Freeman, *supra* note 196.

²⁹⁹ *Id.*; *Key Considerations for Implementing Emergency Shelter Within an Effective Crisis Response System*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, 9 (Aug. 2017), https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-key-considerations.pdf.

³⁰⁰ Freeman, *supra* note 196.

³⁰¹ *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government*, WHITE HOUSED FAITH-BASED AND COMMUNITY INITIATIVES, 6, https://www.nationalservice.gov/sites/default/files/documents/faith_guidance.pdf.

³⁰² Garcia & Jasek-Rysdahl, *supra* note 273.

Homelessness and poverty are heavily stigmatized, and people experiencing homelessness are commonly stereotyped as lazy, criminals, and addicts.³⁰³ Some even believe people are voluntarily homeless, flocking to areas with robust homeless services.³⁰⁴ Attempts to set up homeless shelters, whether on religious land or not, are often met with vehement opposition.³⁰⁵ Religious leaders should prepare to communicate with and educate their community.

Many myths exist about homelessness and facilities that provide shelter for the unhoused.³⁰⁶ These myths can lead to unfounded fears – that crime will increase, property values will go down, and the overall quality of living in the neighborhood will be reduced.³⁰⁷ This attitude is epitomized by the Not In My Backyard (NIMBY) ideology – though it can

manifest in other forms as well.³⁰⁸ NIMBY is a “phenomenon in which residents of a neighborhood consider a new development (like affordable [or] supportive housing, a group home, or a shelter)...as unwanted or ill-suited to the area.”³⁰⁹

Opponents often cite unquantifiable and subjective criteria, such as changes in “neighborhood character”³¹⁰ or fears that new residents won’t “fit into the neighborhood.”³¹¹ At least one study suggests that in 43% of

Myth:
Property values will go down

Reality:
*Studies on low-income housing find no impact on property values.*²⁷⁸

³⁰³ *The Stigmas of Homelessness*, BOSTON U. COMMUNITY SERVICE CTR.’S FIRST-YEAR STUDENT OUTREACH PROJECT, <https://fysophomelessnessandhousing.wordpress.com/the-stigmas-of-homelessness/> (last visited Dec. 4, 2017).

³⁰⁴ Gale Holland, *Malibu church pressured to end homeless dinners, with some saying it lures needy to upscale city*, LA TIMES (Nov. 24, 2017), <http://www.latimes.com/local/lanow/la-me-ln-malibu-homeless-soup-kitchen-20171124-story.html>.

³⁰⁵ Emma Woolley, *How can we best address NIMBYism regarding homeless shelters?*, HOMELESS HUB (Apr. 24, 2015), <http://homelesshub.ca/blog/how-can-we-best-address-nimbyism-regarding-homeless-shelters>; Jesse Coburn, *After the Shouting, Do Shelters and Supportive Housing Harm Neighborhoods?*, CITYLIMITS.ORG (Feb. 25, 2015), <https://citylimits.org/2015/02/25/after-the-shouting-do-shelters-and-supportive-housing-harm-neighborhoods/>; Telephone Interview with Aaron Scott, *supra* note 37.

³⁰⁶ Shuavarnnasri, *supra* note 31; *Overcoming opposition to affordable housing*, *supra* note 32.

³⁰⁷ *Overcoming opposition to affordable housing*, *supra* note 32.

³⁰⁸ Woolley, *supra* note 305; Vincent Lyon-Callo, *Making Sense of NIMBY: Poverty, Power and Community Opposition to Homeless Shelters*, 13 CITY AND SOCIETY 183, 193 (2001); Rachel D. Godsil, *Breaking the Cycle: Implicit Bias, Racial Anxiety, and Stereotype Threat*, POVERTY & RACE RESEARCH ACTION COUNCIL (Jan./Feb. 2015), <http://www.prrac.org/newsletters/janfeb2015.pdf>.

³⁰⁹ Woolley, *supra* note 305; see also Laura Varlas, *Hold the Line: Engagement Practices That Welcome Families in Poverty*, 57 ED. UPDATE 9 (2015), <http://www.ascd.org/publications/newsletters/education-update/sept15/vol57/num09/Hold-the-Line@-Engagement-Practices-That-Welcome-Families-in-Poverty.aspx>.

³¹⁰ *NIMBY to Neighbors: A Series of ‘NIMBY’ Fact Sheets*, GREATER VICTORIA COALITION TO END HOMELESSNESS, http://victoriahomelessness.ca/wp-content/uploads/2014/10/NIMBY-Package-Print_FINAL.pdf.

³¹¹ *Overcoming opposition to affordable housing*, *supra* note 32.

cases of NIMBY opposition, the opposition is based expressly on prejudice.³¹² Moreover, the residents of future shelters and low-income housing often already live in the neighborhood – they are simply living unhoused.³¹³ A case study of opposition to a shelter in Northampton, Massachusetts, found that “the relationship between knowledge about homelessness and homeless people and community members’ responses to homelessness suggests that much opposition...can be traced to popular understandings and imaginings of homeless people as pathological and deviant.”³¹⁴ The implications are clear: people who do not struggle with housing instability often do not want to see, hear, or think about poor and unhoused people in their communities.

Overcoming neighborhood resistance to homeless services requires advocates to address these fears directly, rather than just appealing to compassion. As expected of anxieties based in personal prejudice, most outcomes feared by opponents to these services in their neighborhood are baseless, as mythical as the underlying stereotypes that informed them.³¹⁵ Most research into the effects of housing for people in poverty – including homeless shelters and supportive and subsidized housing – has focused on crime rates and property values.³¹⁶ These studies tend to show that housing services lead to neither an increase in crime nor devaluation of property.³¹⁷

Myth:
Crime will increase

Reality:
Studies do not demonstrate a connection between shelters and increased crime.²⁷⁸

Because there is so much strong emotion and misinformation surrounding the impact of homelessness and homeless shelters on a community, organizations who want to provide homeless services must be prepared to communicate with and educate their neighbors. Even with the legal protections on religious exercise, backlash from the community can undermine and deter efforts to provide shelter on religious land by encouraging local jurisdictions to act anyways or convincing sources of funding to withdraw.³¹⁸

Besides potential legal threats, community members may retaliate in ways that endanger shelter residents or otherwise make the operation of a shelter impracticable.³¹⁹ The

³¹² Jeannie Wynne-Edwards, *Overcoming Community Opposition to Homelessness Sheltering Projects Under the National Homelessness Initiative*, GOV'T OF CANADA (Sept. 2003), <http://www.urbancentre.utoronto.ca/pdfs/elibrary/NHINIMBY.pdf>.

³¹³ *Overcoming opposition to affordable housing*, *supra* note 32.

³¹⁴ Lyon-Callo, *supra* note 308 at 199.

³¹⁵ *NIMBY to Neighbors*, *supra* note 310.

³¹⁶ Coburn, *supra* note 305.

³¹⁷ *Id.*; *NIMBY to Neighbors*, *supra* note 310; *Permitted Encampment Evaluation*, *supra* note 289; George Galster et al, *The Impacts of Supportive Housing on Neighborhoods and Neighbors*, URBAN INSTITUTE (Oct. 1999), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.457.912&rep=rep1&type=pdf>.

³¹⁸ Telephone Interview with Aaron Scott, *supra* note 37; *supra* Part I, Section (B).

³¹⁹ Telephone Interview with Aaron Scott, *supra* note 37.

homeless community is often the target of violent hate crimes, likely due to the same biases and prejudices that motivate opponents to providing housing for them.³²⁰ Religious homeless service providers that face strong opposition may find themselves or their residents targets of violence or harassment.³²¹ Accordingly, FBOs should consider the vehemence of opposition to the services they provide when assessing their security and staffing needs.

There are several steps a congregation can take to mitigate potential backlash from neighbors.³²² First, it should research any local law that may conflict with its intended use and obtain any necessary permits, asserting its freedom of religious exercise if necessary. This effort may take much of the force out of the opposition.

Myth:
New residents won't fit into the neighborhood

Reality:
Often, the future occupants of shelters already live in the neighborhood.²⁷⁴

Second, it should take advantage of its built-in constituency of congregation members. Because the members of the congregation all share the same faith, they are more likely to share the same mission and tend to be supportive of efforts to help those in need.³²³ The congregation can help to educate and convince their own neighbors and increase community support for the effort. Of course, faith-based organizations, like any other organization, often include people with very different ideas about the

extent of their religious imperative to help people in need and how best to implement any such efforts. Congregations should first assess how much support the idea of hosting a shelter has among its member and determine whether it might drastically divide them.³²⁴

Finally, many congregations may find it helpful to call a neighborhood meeting.³²⁵ These meetings have the potential to reinforce neighbors' erroneous beliefs about their rights to control development in their neighborhood and may inflame opposition rather than quelling it.³²⁶ However, when public meetings are "carefully planned, communicated, and

³²⁰ *No Safe Place: A Survey of Hate Crimes and Violence Committed Against Homeless People in 2014 & 2015*, NATIONAL COALITION FOR THE HOMELESS (Jul. 2016), <http://nationalhomeless.org/wp-content/uploads/2016/07/HCR-2014-15.pdf>; Evan Bush, *Violence against homeless can go unreported*, SEATTLE TIMES (Feb. 1, 2016), <https://www.seattletimes.com/seattle-news/data/violence-against-homeless-can-go-unreported/>.

³²¹ Telephone Interview with Aaron Scott, *supra* note 37.

³²² See generally *Faith-Based Toolkit on Ending Homelessness*, Ariz. Coalition to End Homelessness, <https://azhousingcoalition.org/Resources/Documents/Fact%20Sheets/Toolkit%20on%20homelessness%20for%20faith%20communities.pdf> (last visited Mar. 20, 2018).

³²³ Telephone Interview with Sara-Jane & Bill Cohen, *supra* note 68; Interview with Bill Kirlin-Hackett, *supra* note 26.

³²⁴ Email from Cliff Cantor, *supra* note 237.

³²⁵ Freeman, *supra* note 196; *Overcoming opposition to affordable housing*, *supra* note 32.

³²⁶ *Overcoming opposition to affordable housing*, *supra* note 32.

moderated,” they can “overcome attitudes that were based on misinformation, educate, get buy-in, engage the silent majority, and defuse tensions and fears.”³²⁷

The effects of anti-homelessness stigma and stereotyping are widespread and pervasive; opponents and advocates alike have been exposed repeatedly to these negative representations.³²⁸ One researcher suggests this “notion of ‘the homeless’ as a discursive category consisting of deviant, homeless people in need of professional reform and retraining was re-produced and reinforced through...well-meaning efforts by the sheltering industry.”³²⁹ Organizations that seek to help the homeless community “become complicitous [sic] in crafting NIMBY opponents by promulgating images of dysfunctional homeless people in need of the expert help professionals within the shelters can provide.”³³⁰ Organizations that wish to help people experiencing housing instability must be aware of the messages they are sending in their efforts to do good.

Further, they must be open to discourse with local government and their broader community – including opponents – in order to “work towards a broad-based movement addressing political-economic issues of concern to many citizens...rather than simply living with systemic inequality and abject poverty by building more shelters.”³³¹ “To adequately care for the homeless, let alone attack the systemic causes of homelessness, political support is necessary. Yet that support is lacking.”³³²

³²⁷ *Id.*

³²⁸ Lyon-Callo, *supra* note 308 at 203; Jennifer Ceema Samimi, *Funding America’s Nonprofits: The Nonprofit Industrial Complex’s Hold on Social Justice*, COLUMBIA SOCIAL WORK REV., Vol. 17 (2010), <http://www.racialequitytools.org/resourcefiles/2010NPIndustrialComplex.pdf>; *Beyond the Non-Profit Industrial Complex*, INCITE!, <http://www.incite-national.org/page/beyond-non-profit-industrial-complex> (last visited Dec. 4, 2017).

³²⁹ Lyon-Callo, *supra* note 308 at 203-204.

³³⁰ *Id.* at 204.

³³¹ *Id.*; Telephone Interview with Mike Ramos, Executive Director, The Church Council (Sept. 27, 2017).

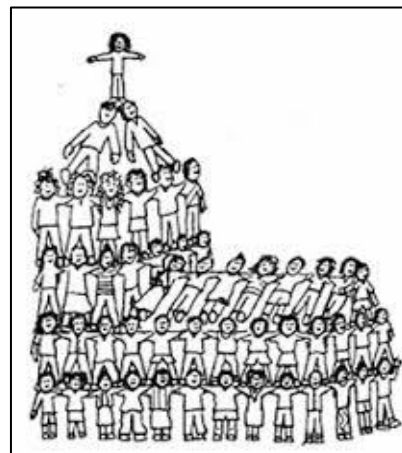
³³² Elizabeth Tracy & Randy Stoecker, *Homelessness: The Service Providers’ Perspective on Blaming the Victim*, J. OF SOC. & SOCIAL WELFARE: Vol. 20, Iss. 3, Art. 4 (1993), <http://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=2081&context=jssw>; Telephone Interview with Mike Ramos, *supra* note 331.

RECOMMENDATIONS

As surveyed above, there are many ways that religious organizations can contribute to the fight against homelessness. While each organization's program will be unique based on their goals and resources, any potential host should be mindful of these following three recommendations

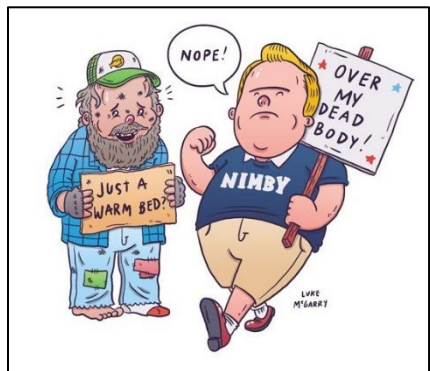
→ Recommendation #1: Build Partnerships

Many religious shelter hosts partner with other organizations, including non-profits, other religious organizations, and governments. These partnerships have several benefits. They may relieve the burden on the host organization through providing staffing, funding, and other resources. Rotating shelter partnerships also reduce the number of days each week a shelter must operate. Partnerships can also contribute to building a broad coalition against homelessness and working towards more long-term solutions.



Organizations should also build partnerships with the guests they serve. This leads to increased stability and helps guests on a pathway out of homelessness.

→ Recommendation #2: Prepare for Opposition



Homelessness is an issue imbued with heavy stigma, and community members are likely to oppose the opening of a homeless service facility in their neighborhood. Potential service providers must be aware of this possibility and should develop strategies to combat opposition. Debunking some myths about homelessness and the effects of homeless shelters on neighborhoods may win some people over. However, it is possible the community will never be accepting of their unhoused neighbors. Where anger and opposition persist, shelter hosts should engage in

self-care to protect their mental wellbeing, so they can continue being effective service providers.

→ Recommendation #3: Take Care How You Include and/or Exclude Those with Different Behaviors or Backgrounds

There are several ways shelters may exclude people with different behaviors or backgrounds. Shelter rules often exclude people because they have a criminal record or substance use issues. Data collection and ID requirements can exclude undocumented people and domestic violence



victims, as well as the large segment of unhoused people who simply do not have identification. Rules regarding gender presentation and identity often exclude the LGBTQ community; because many religions have teachings against LGBTQ communities, they are especially likely to have rules that exclude on this basis. Rules requiring that guests participate in religious activities, such as prayer or sermons, can also exclude. These rules can prevent people who suspect they would be unwelcome, such as those in the LGBTQ community or people from other religions, from seeking shelter.

CONCLUSION

This brief highlighted some of the challenges and benefits FBOs face in addressing homelessness on their property. While there are advantages and disadvantages to FBOs providing shelter and other homeless services, they are in a unique position to do so.

PROS	CONS
In unique position to do so because of legal protections	May lack the resources and trained staff available to governments and non-profits
Built-in constituency of supporters in congregation	More oriented to respond to immediate need than to work towards broad, lasting policy change
Perceived as more caring and holistic than non-profit and government service providers	Opposition from community and government can be harsh and even violent
Broad public support	Tenets of faith may conflict with desire to serve people in need

Many potential disadvantages can be minimized through careful, strategic planning and research. By staying informed about the potential legal, operational, and community considerations at play in providing social services, FBOs can best take advantage of their own resources and the resources of surrounding community organizations while doing their part in the fight to end homelessness. By building partnerships, preparing for opposition, and being mindful about restrictive shelter policies, FBOs have incredible potential to practice their faith by helping neighbors in need.

Overall, while providing social services involves time, effort, and resources, it is not as daunting a task as it may at first seem. Any FBO that wishes to use its land to address homelessness should be able to contribute in a way that works for it and its members.

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